THE GENERAL STATUTES OF NORTH CAROLINA

1987 CUMULATIVE SUPPLEMENT

Annotated, under the Supervision of the Department of Justice, by the Editorial Staff of the Publishers

Under the Direction of
A. D. KOWALSKY, S. C. WILLARD, W. L. JACKSON,
K. S. MAWYER, P. R. ROANE AND S. S. WEST

Volume 1C, Part II

Chapters 18 to 20

Annotated through 356 S.E.2d 26. For complete scope of annotations, see scope of volume page.

Place Behind Supplement Tab in Binder Volume. This Supersedes Previous Supplement, Which May Be Retained for Reference Purposes.

THE MICHIE COMPANY
Law Publishers
CHARLOTTESVILLE, VIRGINIA
1987

Preface

This Cumulative Supplement to Replacement Volume 1C, Part II contains the general laws of a permanent nature enacted by the General Assembly through the 1987 Regular Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purpose of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P. O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to The Michie Company, Law Publishers, Charlottesville, Virginia.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1987 Regular Session affecting Chapters 18 through 20 of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

North Carolina Reports through Volume 319, p. 464.
North Carolina Court of Appeals Reports through Volume 185, p. 173.
South Eastern Reporter 2nd Series through Volume 356, p. 26.
Federal Reporter 2nd Series through Volume 817, p. 761.
Federal Supplement through Volume 658, p. 304.
Federal Rules Decisions through Volume 115, p. 72.
Bankruptcy Reports through Volume 72, p. 618.
Supreme Court Reporter through Volume 107, p. 2210.
North Carolina Law Review through Volume 65, p. 147.
Wake Forest Law Review through Volume 22, p. 424.
Campbell Law Review through Volume 9, p. 206.
Duke Law Journal through 1987, p. 190.
North Carolina Central Law Journal through Volume 16, p. 222.
Opinions of the Attorney General.

User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included herein. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See Volume 1A, Part I for the complete User's Guide.

The General Statutes of North Carolina

1987 Cumulative Supplement

VOLUME 1C, PART II

Chapter 18B.

Regulation of Alcoholic Beverages.

ARTICLE 1.

General Provisions.

§ 18B-100. Purpose of Chapter.

Local Modification. — (As to this Chapter) City of Concord: 1985 (Reg. Sess., 1986), c. 861, s. 1; (As to this Chapter) Town of Lake Lure: 1979, c. 353, s. 5; 1987, c. 194, s. 5.

Editor's Note. —

Session Laws 1981, c. 412, which enacted this Chapter, as amended by Session Laws 1981, c. 747, s. 66, provides in s. 4 (4) that in all places where they appear in the General Statutes, the phrases "intoxicating liquor" and "liquor," except where "liquor" appears in the phrase "spirituous liquor," are amended to read "alcoholic beverages."

CASE NOTES

ABC Permit Preempts Municipal Zoning Ordinance. — In case in which petitioner, without objection by respondent board, argued that the decision of the ABC Commission to grant him a permit preempted respondent's denial of his special exception use permit request since the zoning ordinance, upon which respondent's denial was based, attempted to regulate the sale of alcoholic beverages, which is a violation of State law, the trial court did not err in concluding that petitioner, as the holder of a valid ABC permit issued by the State Alcoholic Beverage Control Commission, was entitled to be issued a city beer license, and in ordering the tax collector of the city to issue any city license. In re Melkonian, — N.C. App. —, 355 S.E.2d 503 (1987).

Applied in AGL, Inc. v. N.C. ABC Comm'n, 68 N.C. App. 604, 315 S.E.2d 718 (1984).

§ 18B-101. Definitions.

As used in this Chapter, unless the context requires otherwise:

(15) "Unfortified wine" means wine that has an alcoholic content produced only by natural fermentation or by the addition of pure cane, beet, or dextrose sugar, and that has an alcoholic content of not more than seventeen percent (17%) alcohol by volume.

(16) "Uncorporated area" means an area in a county that:

(1) Borders on another state;

(2) Where ABC stores and the sale of unfortified wines and malt beverages are permitted in all cities in the county;

(3) Where the sale of unfortified wines and malt beverages is permitted in the county; and such unincorporated area

(a) Contains more than a 1000 acres and is made up of privately-owned land and land owned by an association or club having more than 200 members

and created for municipal and recreational purposes;

(b) Which as of the date of the enactment of G.S. 18B-600 levied assessments or dues and provided municipal services. (1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 2; c. 1285, s. 1; 1983, c. 435, s. 41; 1985, c. 69; 1987, c. 443, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Local Modification. — Village of Bald Head Island: 1985, c. 156.

Editor's Note. —

Session Laws 1987, c. 443, which added subdivision (16), provides in s. 3 that the act shall not include Robeson, Cleveland, Rutherford and Polk Counties.

Effect of Amendments. —

The 1985 amendment, effective April 10, 1985, deleted "not less than six percent (6%) and" preceding "not more than seventeen percent" near the end of subdivision (15).

The 1987 amendment, effective January 1, 1988, added subdivision (16).

Legal Periodicals. —

For comment, "Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated," see 19 Wake Forest L. Rev. 1013 (1983).

§ 18B-102. Manufacture, sale, etc., forbidden except as expressly authorized.

CASE NOTES

Quoted in Hutchens v. Hankins, 63 N.C. App. 1, 303 S.E.2d 584 (1983).

§ 18B-103. Exemptions.

The following activities shall be permitted:

(8) The possession and use of unfortified wine or fortified wine for sacramental purpose by any organized church or ordained minister, including in public school buildings when the use of those buildings is approved by the local school board;

(1923, c. 1, ss. 4, 19, 20; C.S., s. 3411(d), (s), (t); 1935, c. 1141; 1971, c. 872, s. 1; c. 1233; 1981, c. 412, s. 2; c. 747, s. 36; 1981 (Reg. Sess., 1982), c. 1262, s. 3; 1983, c. 435, s. 6; 1985, c. 566, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1985 amendment, effective July 2, 1985, added "wine" following "unfortified," substituted "purpose" for "purposes" and inserted "including in public school buildings when the use of those buildings is approved by the local school board" in subdivision (8).

§ 18B-104. Administrative penalties.

CASE NOTES

Cited in In re Melkonian, — N.C. App. —, 355 S.E.2d 503 (1987).

§ 18B-108. Sales on trains.

Alcoholic beverages may be sold on railroad trains in this State upon receipt of the required revenue license under G.S. 105-113.76. (1981, c. 412, s. 2; c. 747, s. 37; 1985, c. 114, s. 5.)

Editor's Note. — Section 14 of Session Laws 1985, c. 114, provides that the act does not affect licenses issued for the period May 1, 1984, to April 30, 1985.

Effect of Amendments. — The 1985 amendment, effective April 23, 1985, substituted "Alcoholic beverages" for "Malt beverages and unfortified wine" and substituted "G.S. 105-113.76" for "G.S. 105-113.75."

ARTICLE 1A.

Compensation for Injury Caused by Sales to Underage Persons.

§ 18B-120. Definitions.

Legal Periodicals. — For comment, "Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated," see 19 Wake Forest L. Rev. 1013 (1983).

§ 18B-121. Claim for relief created for sale to underage person.

CASE NOTES

Punitive damages may be recovered against impaired drivers in certain situations without regard to the drivers' motives or intent. Huff v. Chrismon, 68 N.C. App. 525, 315 S.E.2d 711, cert. denied, 311 N.C. 756, 321 S.E.2d 134 (1984).

Quoted in Freeman v. Finney, 65 N.C. App. 526, 309 S.E.2d 531 (1983).

§ 18B-122. Burden of proof and admissibility of evidence.

CASE NOTES

Violation of Former § 18A-8 Was Negligence Per Se. Freeman v. Finney, 65 N.C. App. 526, 309 S.E.2d 531 (1983), cert. denied, 310 N.C. 744, 315 S.E.2d 702 (1984).

Article 2.

State Administration.

§ 18B-200. North Carolina Alcoholic Beverage Control Commission.

(a) Creation of Commission; compensation. — The North Carolina Alcoholic Beverage Control Commission is created to consist of a chairman and two associate members. The chairman shall devote his full time to his official duties and receive a salary fixed by the General Assembly in the Current Operations Appropriations Act. The associate members shall be compensated for per diem, subsistence and travel as provided in Chapter 138 of the General Statutes.

(b) Appointment of Members. — Members of the Commission shall be appointed by the Governor to serve at his pleasure.

(c) Vacancy. — The Governor shall fill any vacancy on the Commission by appointing a successor to serve at the Governor's pleasure. If the chairman's seat becomes vacant, the Governor may designate either the new member or an existing member of the Commission as the chairman.

(d) Employees. — The Commission may authorize the chairman to employ, discharge, and otherwise supervise subordinate personnel of the Commission. The Commission shall appoint at least one hearing officer with authority to make investigations, hold hearings, and perform any other duties authorized by Chapter 150B. (1937, c. 49, ss. 2, 3; c. 411; 1939, c. 185, s. 5; 1941, c. 107, s. 5; 1963, c. 916, s. 1; 1965, c. 1102, ss. 1, 2; 1969, c. 294, ss. 1, 2; 1971, c. 872, s. 1; 1979, c. 336; 1981, c. 412, s. 2; 1983, c. 717, s. 4; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 827, § 1.)

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1985, substituted reference to the Current Operations Appropriations Act for reference to the Budget Appropriations Act in this section.

The 1987 amendment by c. 827, s. 1, effective August 13, 1987, substituted reference to Chapter 150B for reference to Chapter 150A in subsection (d).

§ 18B-203. Powers and duties of the Commission.

(a) Powers. — The Commission shall have authority to:

(1) Administer the ABC laws;

(2) Provide for enforcement of the ABC laws, in conjunction with the ALE Division;

(3) Set the prices of alcoholic beverages sold in local ABC stores as provided in Article 8;

(4) Require reports and audits from local boards as provided in G.S. 18B-205;

(5) Determine what brands of alcoholic beverages may be sold in this State;

(6) Contract for State ABC warehousing, as provided in G.S. 18B-204;

(7) Dispose of damaged alcoholic beverages, as provided in G.S. 18B-806;

(8) Remove for cause any member or employee of a local board;
(9) Supervise or disapprove purchasing by any local board and inspect all records of purchases by local boards;
(10) Approve or disapprove rules adopted by any local board;
(11) Approve or disapprove the opening and location of ABC stores, as provided in Article 8;
(12) Issue ABC permits, and impose sanctions against permittees;
(13) Provide for the testing of alcoholic beverages, as provided in G.S. 18B-206;
(14) Fix the amount of bailment charges and bailment surcharges to be assessed on liquor shipped from a Commission warehouse;
(15) Collect bailment charges and bailment surcharges from local boards;
(16) Notwithstanding any law to the contrary, enter into contracts for design and construction of a warehouse or warehouses and supervise work and materials used in the construction, as provided in G.S. 18B-204;
(17) Provide for the distribution of spirituous liquor to armed forces installations within this State for resale on the installation.

(1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2; c. 747, s. 38; 1981 (Reg. Sess., 1982), c. 1285, s. 2; 1987, c. 136, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective May 4, 1987, added subdivision (a)(17).

§ 18B-204. State warehouse.

(a) Contracting for Private Warehouse. — The Commission shall provide for the receipt, storage, and distribution of spirituous liquor by one of the following methods:
(1) By negotiated contract with a privately owned warehouse;
(2) By negotiated contract with privately owned warehouses in several regions of the State. The Commission shall choose locations for the warehouses to promote efficient distribution of spirituous liquor to all local boards, to maintain control of that liquor, and to insure the Commission's supervision of warehousing procedures; or
(3) By the construction of a warehouse, and by contracting for receipt, storage and distribution of spirituous liquor by an independent contractor, by negotiated contract or by the use of procedures for purchase and contract by State agencies, for the operation of that warehouse.

(1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396;

1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1285, s. 3; 1987, c. 136, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1987 amendment, effective May 4, 1987, added the language beginning "and by contracting for receipt" at the end of subdivision (a)(3).

§ 18B-208. ABC Commission bonds and funds.

(b) Special Fund. — A special fund in the office of the State Treasurer, the ABC Commission Fund, is created. On and after November 1, 1982, all moneys derived from the collection of bailment charges and bailment surcharges shall be deposited in the ABC Commission Fund for the purpose of carrying out the provisions of this Chapter. The ABC Commission Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of this fund shall revert to the General Fund. The Commission shall fix the level of the bailment surcharges at an amount calculated to cover operating expenses of the Commission and the retirement of bonds issued for construction of a Commission warehouse and offices. The Commission may impose a bailment surcharge only when revenue bonds issued under this section are outstanding.

All moneys credited to the ABC Commission Fund shall be used to carry out the intent and purposes of the ABC law in accordance with plans approved by the North Carolina ABC Commission and the Director of the Budget, and all these funds are appropriated, reserved, set aside, and made available until expended for the administration of the ABC law. (1981 (Reg. Sess., 1982), c. 1285, s. 4; 1983, c. 761, s. 133; 1987, c. 832, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987, c. 832, ss. 9 to 13 provide: "Sec. 9. The board of commissioners of any county may, by resolution, after 10 days' public notice and a public hearing held pursuant thereto, adopt the expansion of the local sales tax levy provided in this act. Upon adoption of such a resolution, the board of commissioners shall forward a copy of the resolution to the Secretary of Revenue. Pursuant to the provisions of G.S. 105-483, 105-490, and 105-498, adoption of the expansion of the Local Government Sales and Use Act provided in Section 4 of this act constitutes adoption of an equivalent expansion of the local sales taxes levied under Articles 40, 41, and 42 of Chapter 105 of the General Statutes.

"Sec. 10. If a county fails to adopt the expansion of the Local Government Sales and Use Tax Act provided in Section 4 of this act on or before February 1, 1988, the sales and use taxes levied by the county pursuant to Articles 39, 40, 41, and 42 are repealed effective March 1, 1988, because they will be inconsistent with the scope of the levies authorized by those Articles as amended effective March 1, 1988. If Mecklenburg County fails to adopt the expansion of Section 4 of Chapter 1096 of the 1967 Session Laws provided in Section 5 of this act on or before February 1, 1988, the sales and use tax levied by Mecklenburg County pursuant to Chapter 1096 of the 1967 Session Laws is repealed effective March 1, 1988, because it will be inconsistent with the scope of the levy authorized by that Chapter as amended effective March 1, 1988, and the sales and use taxes levied by Mecklenburg County pursuant to Articles 40, 41, and 42 are repealed effective March 1, 1988,

because those Articles will no longer apply to Mecklenburg County, as provided in G.S. 105-482, 105-489, and 105-497. If the sales and use taxes levied by a county are repealed as provided in this section because the county failed to adopt the expansion of the local sales tax levy, the county may, on or after March 1, 1988, levy local sales and use taxes in accordance with the provisions of Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and Chapter 1096 of the 1967 Session Laws, as applicable.

"Sec. 11. This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Sec. 12. It is the intent of the General Assembly that a Select Committee composed of members of the General Assembly shall be appointed to study the impact on local sales and use tax revenue and the administrative cost savings to the State of consolidating the local sales and use taxes levied under Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and under Chapter 1096 of the 1967 Session Laws, as amended, with the State sales and use tax levied under Article 5 of Chapter 105 of the General Statutes. It is further intended that the Select Committee shall report to the 1987 General Assembly on the first day of the 1988 Regular Session.

"Sec. 13. It is the intent of the General Assembly that if the local sales and use taxes levied under Articles 39, 40, 41, and 42 of Chapter 105 of the General Statutes and under Chapter 1096 of the 1967 Session Laws, as amended, are at a later date consolidated with the State sales and use taxes levied under Article 5 of Chapter 105 of the General Statutes, then the legislation enacting the consolidation shall also change the method of distributing the proceeds of the excise tax on liquor levied under G.S. 105-113.80(c) from the current formulation to a new method that would distribute one-eighth (1/8) of the total proceeds of that excise tax to local governments in the same manner as the State sales and use tax proceeds that are distributed to local governments under the legislation that consolidates the local sales taxes with the State sales tax."

Effect of Amendments. —

The 1987 amendment, effective October 1, 1987, deleted "and the ALE Division" following "operating expenses of the Commission" in the third sentence of subsection (b).

CASE NOTES

Bailment surcharge imposed on each case of distilled spirits shipped from ABC warehouse to ABC stores is not a tax; the cost of liquor enforcement is a burden incident to the privilege of buying spirituous liquors in the state and such a surcharge is not unconstitutional as a tax imposed in violation of N.C. Const., Art. II, § 23 or of N.C. Const., Art. V, § 2. North Carolina Ass'n of ABC Bds. v. Hunt, 76 N.C. App. 290, 332 S.E.2d 693, cert. denied, 314 N.C. 667, 336 S.E.2d 400 (1985).

Article 3.

Sale, Possession, and Consumption.

§ 18B-300. Purchase, possession and consumption of malt beverages and unfortified wine.

(a) Generally. — Except as otherwise provided in this Chapter, the purchase, consumption, and possession of malt beverages and unfortified wine by individuals 21 years old and older for their own use is permitted without restriction.

(b) Consumption at Off-Premises Establishment. — It shall be unlawful to consume, or for a permittee to allow the consumption of, malt beverages or unfortified wine on any premises having only

an off-premises permit for the kind of alcoholic beverage being consumed.

(c) Local Ordinance. — A city or county may by ordinance regulate the consumption of malt beverages and unfortified wine on property owned or occupied by that city or county. (1939, c. 158, s. 503; 1971, c. 872, s. 1; 1973, c. 1452, ss. 1-3; 1977, c. 176, ss. 2, 3; c. 693; 1979, c. 19, s. 2; c. 445, s. 4; c. 893, s. 11; 1981, c. 412, s. 2; 1983, c. 435, s. 32; 1985, c. 141, s. 1.)

Local Modification. — Town of Beaufort: 1985, c. 293.

Editor's Note. —

Session Laws 1985, c. 141, s. 6, provides that the amendment thereby shall become effective September 1, 1986. Section 6 further provides that if the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to the National Uniform Drinking Age of 21 as found in Section 6 of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, then ss. 1, 2, 2.1, 4 and 5 of the act shall expire upon the certification of the Secretary of State that the federal mandate has been repealed or has been invalidated, and the statutes amended by ss. 1, 2, 2.1, 4 and 5 shall revert to the form they would have without the amendments made by these sections.

Effect of Amendments. —

The 1985 amendment, effective September 1, 1986, substituted "21 years old" for "19 years old" in subsection (a).

§ 18B-301. Possession and consumption of fortified wine and spirituous liquor.

(f) Unlawful Possession or Use. — As illustration, but not limitation, of the general prohibition stated in G.S. 18B-102(a), it shall be unlawful for:

(1) Any person to consume fortified wine, spirituous liquor, or mixed beverages or to offer such beverages to another person:
   a. On the premises of an ABC store, or
   b. Upon any property used or occupied by a local board, or
   c. On any public road, street, highway, or sidewalk.

(2) Any person to display publicly at an athletic contest fortified wine, spirituous liquor, or mixed beverages;

(3) Any person to permit any fortified wine, spirituous liquor, or mixed beverages to be possessed or consumed upon any premises not authorized by this Chapter;

(4) Any person to possess or consume any fortified wine, spirituous liquor, or mixed beverages upon any premises where such possession or consumption is not authorized by law, or where the person has been forbidden to possess or consume that beverage by the owner or other person in charge of the premises;

(5) Any person to possess on any of the premises described in subsections (a) through (c) a greater amount of fortified wine or spirituous liquor than authorized by this Chapter;

(6) Any permittee, other than a mixed beverage or culinary permittee, to possess spirituous liquor or mixed beverages on his licensed premises.

(7) Any person to possess on his person or consume malt beverages or unfortified wine upon any property owned or leased by a local board of education and used by the local board of education for school purposes. (1905, c. 498, ss. 6-8; Rev.,

ss. 3526, 3534; C.S., s. 3371; 1937, c. 49, ss. 12, 16, 22; c. 411; 1955, c. 999; 1967, c. 222, ss. 1, 8; c. 1256, s. 3; 1969, c. 1018; 1971, c. 872, s. 1; 1973, c. 1226; 1977, c. 176, s. 1; 1977, 2nd Sess., c. 1138, ss. 8-12, 18; 1979, c. 384, s. 3; c. 609, s. 2; c. 718; c. 893, s. 10; 1981, c. 412, s. 2; c. 747, s. 39; 1983, c. 917, s. 1; 1985, c. 566, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 2, 1985, deleted "unless specifically authorized by resolution of the local board of education" at the end of subdivision (f)(7).

§ 18B-302. Sale to or purchase by underage persons.

(a) Sale. — It shall be unlawful for any person to:

(1) Sell or give malt beverages or unfortified wine to anyone less than 21 years old; or

(2) Sell or give fortified wine, spirituous liquor, or mixed beverages to anyone less than 21 years old.

(b) Purchase or Possession. — It shall be unlawful for:

(1) A person less than 21 years old to purchase, to attempt to purchase, or to possess malt beverages or unfortified wine; or

(2) A person less than 21 years old to purchase, to attempt to purchase, or to possess fortified wine, spirituous liquor, or mixed beverages.

(c) Aider and Abettor.

(1) By Underage Person. — Any person who is under the lawful age to purchase and who aids or abets another in violation of subsection (a) or (b) of this section shall be guilty of a misdemeanor punishable by a fine up to five hundred dollars ($500.00) or imprisonment for not more than six months, or both, in the discretion of the court.

(2) By Person over Lawful Age. — Any person who is over the lawful age to purchase and who aids or abets another in violation of subsection (a) or (b) of this section shall be guilty of a misdemeanor punishable by a fine of up to two thousand dollars ($2,000) or imprisonment for not more than two years, or both, in the discretion of the court.

(d) Defense. — It shall be a defense to a violation of subsection (a) of this section if the seller:

(1) Shows that the purchaser produced a driver's license, a special identification card issued under G.S. 20-37.7, a military identification card, or a passport, showing his age to be at least the required age for purchase and bearing a physical description of the person named on the card reasonably describing the purchaser; or

(2) Produces evidence of other facts that reasonably indicated at the time of sale that the purchaser was at least the required age.

(e) Fraudulent Use of Identification. — It shall be unlawful for any person to obtain or attempt to obtain alcoholic beverages in violation of subsection (b) of this section by using or attempting to use:

(1) A fraudulent or altered driver's license; or
(2) A fraudulent or altered identification document other than a driver's license; or
(3) A driver's license issued to another person; or
(4) An identification document other than a driver's license issued to another person.

(f) Allowing Use of Identification. — It shall be unlawful for any person to permit the use of his driver's license or any other identification document of any kind by any person who violates or attempts to violate subsection (b) of this section.

(g) Conviction Report Sent to Division of Motor Vehicles. — The court shall file a conviction report with the Division of Motor Vehicles indicating the name of the person convicted and any other information requested by the Division if the person is convicted of:
(1) A violation of subsection (e) or (f) of this section; or
(2) A violation of subdivision (c)(1) of this section; or
(3) A violation of subsection (b) of this section, if the violation occurred while the person was purchasing or attempting to purchase an alcoholic beverage.

Upon receipt of a conviction report, the Division shall revoke the person's license as required by G.S. 20-17.3.

(h) Handling in Course of Employment. — Nothing in this section shall be construed to prohibit an underage person from selling, transporting, possessing or dispensing alcoholic beverages in the course of employment, if the employment of the person for that purpose is lawful under applicable youth employment statutes and Commission rules.

(i) Purchase or Possession by 19 or 20-Year Old. — A violation of subdivision (b)(1) of this section by a person who is 19 or 20 years old is an infraction and is punishable by a fine of not more than twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs. (1933, c. 216, s. 8; 1959, c. 745, s. 1; 1967, c. 222, s. 3; 1969, c. 998; 1971, c. 872, s. 1; 1973, c. 27; 1977, 2nd Sess., c. 1138, s. 2; 1979, c. 683, s. 2; 1981, c. 412, s. 2; c. 747, ss. 40, 41; 1983, c. 435, ss. 32, 35; c. 740, ss. 1, 2; Ex. Sess., c. 5; 1985, c. 141, ss. 2-3.)

Editor's Note. —

Session Laws 1985, c. 141, s. 6, provides that the amendment thereby shall become effective September 1, 1986. Section 6 further provides that if the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to National Uniform Drinking Age of 21 as found in Section 6 of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, then ss. 1, 2, 2.1, 4 and 5 of the act shall expire upon the certification of the Secretary of State that the federal mandate has been repealed or has been invalidated, and the statutes amended by ss. 1, 2, 2.1, 4 and 5 shall revert to the form they would have without the amendments made by these sections.

Effect of Amendments. —

The 1985 amendment by Session Laws 1985, c. 141, ss. 2 and 2.1, effective September 1, 1986, substituted "21 years old" for "19 years old" in subdivisions (a)(1) and (b)(1) and added subsection (i). The 1985 amendment by Session Laws 1985, c. 141, s. 3, effective September 1, 1986, added subsection (h).

Legal Periodicals. — For comment, "Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated," see 19 Wake Forest L. Rev. 1013 (1983).

CASE NOTES

Cited in State v. Carter, 318 N.C. 487, 349 S.E.2d 580 (1986).

§ 18B-305. Other prohibited sales.

CASE NOTES

A violation of this section constitutes negligence per se. However, the nature of the alleged negligence of the defendant does not alter the effect of plaintiff's contributory negligence. Brower v. Robert Chappell & Associates, 74 N.C. App. 317, 328 S.E.2d 45, cert. denied, 314 N.C. 537, 335 S.E.2d 313 (1985).

Quoted in Hutchens v. Hankins, 63 N.C. App. 1, 303 S.E.2d 584 (1983).

§ 18B-306. Making wines and malt beverages for private use.

An individual may make, possess, and transport native wines and malt beverages for his own use and for the use of his family and guests. Native wines shall be made principally from honey, grapes, or other fruit or grain grown in this State, or from wine kits containing honey, grapes, or other fruit or grain concentrates, and shall have only that alcoholic content produced by natural fermentation. Malt beverages may be made by use of malt beverage kits containing grain extracts or concentrates. Wine kits and malt beverage kits may be sold in this State. No ABC permit is required to make beverages pursuant to this section. (1971, c. 872, s. 1; 1973, c. 1218; 1981, c. 412, s. 2; c. 747, s. 43; 1985, c. 114, s. 6.)

Editor's Note. — Section 14 of Session Laws 1985, c. 114, provides that the act does not affect licenses issued for the period May 1, 1984, to April 30, 1985.

Effect of Amendments. — The 1985 amendment, effective April 23, 1985, deleted "and those beverages are exempt from taxation as provided in G.S. 105-113.70(e)" from the end of the last sentence.

Article 4.

Transportation.

§ 18B-400. Amounts that may be transported.

A person may transport at one time the same amount of alcoholic beverages that he is allowed to buy under G.S. 18B-303(a). Greater amounts of fortified wine, unfortified wine and spirituous liquor may be transported with a purchase-transportation permit under G.S. 18B-403. The Commission may also authorize a distillery representative, in the course of his business, to transport and possess up to 10 gallons of spirituous liquor. (1923, c. 1, s. 25; C.S., s. 3411(y); 1937, c. 49, ss. 14, 16; c. 411; 1967, c. 222, ss. 1, 7; c. 1256, s. 3; 1969, c. 598, ss. 2, 3; c. 1018; 1971, c. 872, s. 1; 1977, c. 176, s. 1; c. 586; 1979, c. 607, s. 1; 1981, c. 412, s. 2; 1985, c. 757, s. 163.)

Effect of Amendments. — The 1985 amendment, effective July 15, 1985, added the last sentence.

§ 18B-401. Manner of transportation.

CASE NOTES

Cited in State v. Jones, 63 N.C. App. 411, 305 S.E.2d 221 (1983); State v. Warren, — N.C. App. —, 352 S.E.2d 276 (1987).

§ 18B-403. Purchase-transportation permit.

(a) Amounts. — With a purchase-transportation permit, a person may purchase and transport an amount of alcoholic beverages greater than the amount specified in G.S. 18B-303(a). A permit authorizes the holder to transport from the place of purchase to the destination within North Carolina indicated on the permit at one time the following amount of alcoholic beverages:

(1) A maximum of 100 liters of unfortified wine;
(2) A maximum of 40 liters of either fortified wine or spirituous liquor, or 40 liters of the two combined; or
(3) The amount of fortified wine or spirituous liquors specified on the purchase-transportation permit for a mixed beverage permittee.

(1969, c. 617, s. 1; 1971, c. 872, s. 1; 1973, c. 94; c. 819, s. 1; 1975, ss. 1-4; 1977, c. 176, ss. 1, 2, 4; 1979, c. 19, ss. 3, 4; c. 286, s. 1; c. 445, ss. 1, 3; c. 1076, ss. 1, 2, 3; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, ss. 6-8; 1983, c. 457, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected, it is not set out.

Editor's Note. — Subsection (a) of § 18B-403 is set out to correct a typographical error in the main volume.

§ 18B-404. Additional provisions for purchase and transportation by mixed beverage permittees.

(b) Issuance. — If mixed beverages sales have been approved for an establishment under the last paragraph of G.S. 18B-603(d) or under G.S. 18B-603(e), the purchase-transportation permit for that establishment may be issued by the local board of any city located in the same county as the establishment, provided the city has approved the sale of mixed beverages. Otherwise a licensed establishment may obtain a mixed beverages purchase-transportation permit only from the local board for the jurisdiction in which it is located.

(1981, c. 412, s. 2; c. 747, ss. 46, 47; 1987, c. 136, s. 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective May 4, 1987, deleted the first sentence of subsection (b), which read "A mixed beverages purchase-transportation permit shall be issued only by the local board for the county or city in which a license establishment is located," and added the last sentence of subsection (b).

§ 18B-405. Transportation by permittee.

The holder of a permit for the retail sale of malt beverages, unfortified wine, or fortified wine may transport in the course of his business any amount of the alcoholic beverage he is authorized to sell, without a purchase-transportation permit or a commercial transportation permit under G.S. 18B-1115. (1923, c. 1, s. 15; C.S., s. 3411(o); 1939, c. 158, s. 503; 1971, c. 872, s. 1; 1975, c. 411, s. 7; 1977, c. 70, s. 20; c. 176, s. 7; 1979, c. 286, s. 5; 1981, c. 412, s. 2; 1987, c. 136, s. 4.)

Effect of Amendments. — The 1987 amendment, effective May 4, 1987, substituted "in the course of his business" for "from a wholesaler's place of business to his licensed premises."

Article 5.

Law Enforcement.

§ 18B-500. Alcohol law-enforcement agents.

CASE NOTES

Cited in North Carolina Ass'n of ABC Bds. v. Hunt, 76 N.C. App. 290, 332 S.E.2d 693 (1985).

§ 18B-501. Local ABC officers.

Local Modification. — Greensboro Alcoholic Beverage Control Board: 1985 (Reg. Sess., 1986), c. 886; Town of Lake Lure: 1979, c. 353, s. 5; 1987, c. 194, s. 5.

CASE NOTES

Cited in North Carolina Ass'n of ABC Bds. v. Hunt, 76 N.C. App. 290, 332 S.E.2d 693 (1985).

Article 6.

Elections.

§ 18B-600. Places eligible to hold alcoholic beverage elections.

(e1) Small City Mixed Beverage Elections. — A city may also hold a mixed beverage election if the city has at least 300 registered voters and is located in a county with at least one other city that has approved the sale of mixed beverages. Provided, that if a city that qualifies for an election under this subsection approves the sale of mixed beverages, mixed beverages permittees in the smaller city may purchase liquor from the ABC store designated by any local ABC board in any other city that has approved the sale of mixed beverages.

This subsection shall not apply to Alamance, Avery, Burke, Caldwell, Carteret, Cleveland, Henderson, Onslow, Polk, Robeson, Rowan, Rutherford, and Wilkes Counties.

(g) Beautification District Elections. — In a county where ABC stores have been approved by an election and a beautification district has been created after May, 1984, and prior to June 30, 1986, an election authorized by subsection (a) of this section may be called in the beautification district. The election shall be called in accordance with G.S. 18B-601(b), conducted, and the results determined in the same manner as county elections held under this Article. For purposes of this Article, beautification districts holding any election shall be treated on the same basis as counties, and municipalities located within those beautification districts shall be treated on the same basis as cities. (1937, c. 49, ss. 25, 26; c. 431; 1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, cc. 32, 33; 1977, c. 149, s. 1; c. 182, s. 2; 1977, 2nd Sess., c. 1138, s. 15; 1979, c. 140, ss. 2, 3; c. 609, s. 1; c. 683, s. 13; 1979, 2nd Sess., c. 1174; 1981, c. 412, s. 2; c. 747, s. 49; 1983, c. 113, s. 1; 1983, c. 457, s. 2; 1985 (Reg. Sess., 1986), c. 919, s. 1; 1987, c. 766.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Local Modification. — (As to Article 6) Avery and Watauga: 1985, c. 390; (as to Article 6) town of Beech Mountain: 1985, c. 390; town of Seven Devils: 1985, c. 671, s. 1.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective July 7, 1986, added subsection (g).

The 1987 amendment, effective July 1, 1987, added subsection (e1).

§ 18B-601. Election procedure.

(b) How County Election Called. — A county alcoholic beverage election shall be conducted by the county board of elections. When a county is eligible to hold an election under G.S. 18B-600, the county board of elections shall hold the election upon receiving either:

(1) A written request for an election from the governing body of the county; or

(2) A petition requesting an election signed by at least thirty-five percent (35%) of the voters registered in the county at the time the petition was initiated.

(c) How City Election Called. — A city alcoholic beverage election shall be conducted by the county board of elections or, in the case of a city authorized under Chapter 163 to conduct its own elections, by the city board of elections. When a city is eligible to hold an election under G.S. 18B-600, the board of elections shall hold the election upon receiving either:

(1) A written request for an election from the city governing body; or

(2) A petition requesting an election signed by at least thirty-five percent (35%) of the voters registered in the city at the time the petition was initiated.

(f) Election Date. — The board of elections shall set the date for the alcoholic beverage election, which may not be sooner than 60 days nor later than 120 days from the date the request was received from the governing body or the petition was verified by the board.

No alcoholic beverage election may be held on the Tuesday next after the first Monday in November of an even-numbered year.

(1937, c. 49, ss. 25, 26; c. 431; 1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, cc. 32, 33; 1977, c. 149, s. 1; c. 182, s. 2; 1977, 2nd Sess., c. 1138, s. 15; 1979, c. 140, ss. 2, 3; c. 609, s. 1; c. 683, s. 13; 1979, 2nd Sess., c. 1174; 1981, c. 412, s. 2; 1985, c. 705, ss. 1, 2.1; 1987, c. 14.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1985, c. 705, s. 2, purported to amend § 18B-602(c)(2) by substituting "thirty-five percent (35%)" for "twenty-five percent (25%)." However, it would appear that the change was intended to be made to subdivision (c)(2) of this section. At the direction of the Revisor of Statutes, this amendment was not effectuated. Subsequently, Session Laws 1987, c. 14, amended subdivision (c)(2) of this section to make this substitution.

Effect of Amendments. — The 1985 amendment by c. 705, s. 1, effective with respect to all petitions initiated under this section on or after September 1, 1985, substituted "thirty-five percent (35%)" for "twenty-five percent (25%)" in subdivision (b)(2).

The 1985 amendment by c. 705, s. 2.1, effective July 11, 1985, added the second sentence of subsection (f).

The 1987 amendment, effective March 13, 1987, substituted "thirty-five percent (35%)" for "twenty-five percent (25%)" in subdivision (c)(2).

§ 18B-602. Form of ballots.

Editor's Note. — Session Laws 1985, c. 705, s. 2 purported to amend subdivision (c)(2) of this section by substituting "thirty-five percent (35%)" for "twenty-five percent (25%)." However, this section does not contain a subdivision (c)(2). It would appear that the section intended to be amended was § 18B-601.

§ 18B-603. Effect of alcoholic beverage elections on issuance of permits.

(c) ABC Store Elections. — If an ABC store election is held under G.S. 18B-602(g) and the establishment of ABC stores is approved, each of the following shall be authorized in the jurisdiction that held the election:

(1) The jurisdiction that held the election may establish and operate ABC stores in the manner described in Articles 7 and 8.

(2) The Commission may issue on-premises and off-premises fortified wine and unfortified wine permits to qualified persons and establishments in that jurisdiction, regardless of any unfortified wine election or any local act, except that neither on-premises nor off-premises unfortified wine permits may be issued in a jurisdiction if:

a. The jurisdiction approved ABC stores before January 1, 1982;

b. The jurisdiction held an unfortified wine election before January 1, 1982; and

c. In that unfortified wine election, the jurisdiction did not approve either on-premises or off-premises sales of unfortified wine.

(3) The Commission may issue brown-bagging permits to restaurants, hotels, and community theatres in the county in

which the election was held, whether the election was held by the county or by a city or other jurisdiction within the county. Brown-bagging permits may not be issued, however, for restaurants, hotels, or community theatres in any jurisdiction in which the sale of mixed beverages has been approved.

(d) Mixed Beverage Elections. — If a mixed beverage election is held under G.S. 18B-602(h) and the sale of mixed beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

(1) The Commission may issue mixed beverage permits.

(2) The Commission may issue on-premises malt beverage, unfortified wine, and fortified wine permits for establishments with mixed beverage permits, regardless of any other election or any local act concerning sales of those kinds of alcoholic beverages.

(3) The Commission may issue off-premises malt beverage permits to any establishment that meets the requirements under G.S. 18B-1001(2) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages. The Commission may also issue off-premises unfortified wine permits to any establishment that meets the requirements under G.S. 18B-1001(4) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages.

(4) The Commission may issue brown-bagging permits for private clubs but may no longer issue and may not renew brown-bagging permits for restaurants, hotels, and community theatres. A restaurant, hotel, or community theatre may not be issued a mixed beverage permit under subdivision (1) until it surrenders its brown-bagging permit.

(5) The Commission may continue to issue culinary permits for establishments that do not have mixed beverage permits. An establishment may not be issued a mixed beverage permit under subdivision (1) until it surrenders its culinary permit.

In any county in which the sale of mixed beverages has been approved in elections in at least three cities that, combined, contain more than two-thirds the total county population as of the most recent federal census, the county board of commissioners may by resolution approve the sale of mixed beverages throughout the county, and the Commission may issue permits as if mixed beverages had been approved in a county election.

(f) Permits Not Dependent on Elections. — The Commission may issue the following kinds of permits without approval at an election:

(1) Special occasion permits;

(2) Limited special occasion permits;

(3) Brown-bagging permits for private clubs;

(4) Culinary permits, except as restricted by subdivision (d)(5);

(5) Special one-time permits issued under G.S. 18B-1002;

(6) All permits listed in G.S. 18B-1100.

(f2) Permits for Unincorporated Areas. — The Commission may issue the permits provided for in G.S. 18B-1001(10) to qualified persons and establishments located within an unincorporated area as defined in G.S. 18B-101 without approval at an election. The mixed beverages purchased transportation permit [purchase-transportation permit] authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the same county as the unincorporated area.

(h) Permits Based on Existing Permits. — In any county in which the sale of malt beverage on and off premises, the sale of unfortified wine on and off premises, the sale of mixed beverages, and the operation of an ABC system has been allowed in at least six cities in the county, the Commission may issue permits to sports clubs as defined in G.S. 18B-1000(8) throughout the county. The Commission may issue the following permits:

(1) On and Off Premises Malt Beverage;
(2) On and Off Premises Unfortified Wine;
(3) On and Off Premises Fortified Wine; or
(4) Mixed Beverage.

Retail establishments holding mixed beverage permits shall purchase their spirituous liquor at the nearest municipal ABC system store. (1947, c. 1084, s. 3; 1969, c. 647, s. 2; 1971, c. 872, s. 1; 1981, c. 412, s. 2; c. 589; 1981 (Reg. Sess., 1982), c. 1240; 1983, c. 113, s. 2; 1985, c. 689, s. 7; 1987, c. 136, ss. 5, 6; c. 307, s. 2; c. 443, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Local Modification. — Village of Bald Head Island: 1985, c. 156.

Editor's Note. — Session Laws 1987, c. 443, which added subsection (f2), provides in s. 3 that the act shall not include Robeson, Cleveland, Rutherford and Polk Counties.

The phrase "purchase-transportation permit" has been inserted in brackets following "purchased transportation permit" in the second sentence of subsection (f2) to reflect the phrase apparently intended.

Effect of Amendments. —

The 1985 amendment, effective July 11, 1985, substituted "subdivision (d)(5)" for "subdivision (d)(4)" at the end of subdivision (f)(4).

Session Laws 1987, c. 136, ss. 5, 6, effective May 4, 1987, substituted "to restaurants, hotels, and community theatres" for "for restaurants and hotels" near the beginning of subdivision (c)(3), substituted "may not be issued" for "shall not be issued" near the middle of subdivision (c)(3), substituted "for restaurants, hotels, or community theatres" for "for restaurants or hotels" near the end of subdivision (c)(3), substituted "for restaurants, hotels, and community theatres" for "for restaurants and hotels" at the end of the first sentence of subdivision (d)(4), and substituted "A restaurant or hotel shall not be issued" for "A restaurant, hotel, or community theatre may not be issued" at the beginning of the second sentence of subdivision (d)(4).

Session Laws 1987, c. 307, s. 2, effective June 8, 1987, added subsection (h).

Session Laws 1987, c. 443, s. 2, effective January 1, 1988, added subsection (f2).

Article 7.

Local ABC Boards.

§ 18B-700. Appointment and organization of local ABC boards.

Local Modification. — Moore County: 1983 (Reg. Sess., 1984), c. 957; Wake County: 1983 (Reg. Sess., 1984), c. 1040; Durham: 1983 (Reg. Sess., 1984), c. 1116; Edgecombe: 1987, c. 167; City of Lumberton: 1985 (Reg. Sess., 1986), c. 811; Town of Maxton: 1987, c. 15.

§ 18B-701. Powers of local ABC boards.

CASE NOTES

ABC board has authority to construct buildings in which to carry out its duties. Waters v. Biesecker, 309 N.C. 165, 305 S.E.2d 539 (1983).

The ABC board is not required to construct buildings; it has authority to purchase or lease buildings for use as ABC stores. Waters v. Biesecker, 309 N.C. 165, 305 S.E.2d 539 (1983).

Article 8.

Operation of ABC Stores.

§ 18B-800. Sale of alcoholic beverages in ABC stores.

(b) Fortified Wine. — In addition to spirituous liquor, ABC stores may sell fortified wine.

(1981, c. 412, s. 2; 1985, c. 59, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, rewrote subsection (b), which formerly read, "Other Alcoholic Beverages. — In addition to spirituous liquor, ABC stores may sell the following:

"(1) Fortified wine, and

"(2) Unfortified wine derived principally from fruit or berries grown in North Carolina."

§ 18B-801. Location, opening, and closing of stores.

(d) Insolvent ABC System. — If an ABC system is insolvent, the local board may apply to the Commission for an order to close the system. Upon receipt of an application, or upon its own motion, the Commission shall investigate the system, and if it finds that further operation of the ABC stores will not be profitable, it may order the system closed. If the Commission orders a local system to close, the Commission may:

(1) After consultation with the local board, its creditors, and other interested parties, schedule a phase out of the system's business activities;

(2) Represent the local board in negotiations with creditors and other interested parties;
(3) Require an accounting or auditing of the local system;
(4) Take possession or arrange for the disposition of any liquor for which the local board has not paid;
(5) Apply to the Superior Court to be appointed a receiver for the local board with all powers and duties of a receiver for a corporation under Article 38 of Chapter 1 of the General Statutes, except that the Commission shall not be required to post the bond required by G.S. 1-504; or
(6) Take any other reasonable steps to promote an orderly closing of the system. (1981, c. 412, s. 2; 1987, c. 135.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective May 4, 1987, added subsection (d).

§ 18B-804. Alcoholic beverage pricing.

(b) Sale Price of Spirituous Liquor. — The sale of spirituous liquor sold at the uniform State price shall consist of the following components:
(1) The distiller's price;
(2) The freight and bailment charges of the State warehouse as determined by the Commission;
(3) A markup for local boards as determined by the Commission;
(4) The tax levied under G.S. 105-113.80(c), which shall be levied on the sum of subdivisions (1), (2), and (3);
(5) An additional markup for local boards equal to three and one-half percent (3½%) of the sum of subdivisions (1), (2), and (3);
(6) A bottle charge of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters;
(6a) The bailment surcharge;
(6b) An additional bottle charge for local boards of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters[;]
(7) A rounding adjustment, the formula of which may be determined by the Commission, so that the sale price will be divisible by five; and
(8) If the spirituous liquor is sold to a mixed beverage permittee for resale in mixed beverages, a charge of fifteen dollars ($15.00) on each four liters and a proportional sum on lesser quantities.

(c) Sale Price of Fortified Wine. — The sale price of fortified wine shall include the tax levied by G.S. 105-113.80(b), as well as State and local sales taxes.

(d) Repealed by Session Laws 1985, c. 59, s. 2, effective July 1, 1985. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss.

2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1285, s. 5; 1983, c. 713, ss. 100, 101; 1985, c. 59, s. 2; c. 68, s. 1; c. 114, ss. 7-9.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1985, c. 114, s. 14 provides that the act does not affect licenses issued for the period May 1, 1984, to April 30, 1985.

Session Laws 1985, c. 479, s. 90, provides: "Funds received by the Department of Human Resources from the tax levied on mixed beverages under G.S. 18B-804(b)(8) shall be expended by the Department of Human Resources for alcohol programs in area mental health centers. These funds shall be matched by local funds in accordance with the State/local ratio established by the current area mental health matching formula. These funds shall be allocated to the area mental health programs on a per capita basis as determined by the Office of State Budget and Management's most recent estimates of county populations."

Effect of Amendments. — Session Laws 1985, c. 59, s. 2, effective July 1, 1985, deleted subsection (d), relating to the sale price of unfortified wine.

Session Laws 1985, c. 68, s. 1, effective April 10, 1985, inserted "sold at the uniform State price" in the introductory language of subsection (b).

Session Laws 1985, c. 114, ss. 7-9, effective April 23, 1985, in subdivision (b)(4) substituted "G.S. 105-113.80(c)" for "G.S. 105-113.93," in subsection (c) substituted "G.S. 105-113.80(b)" for "G.S. 105-113.95," and in former subsection (d) substituted "G.S. 105-113.80(b)" for "G.S. 105-113.86."

§ 18B-805. Distribution of revenue.

(b) Primary Distribution. — Before making any other distribution, a local board shall first pay the following from its gross receipts:

(1) The board shall pay the expenses, including salaries, of operating the local ABC system.

(2) Each month the local board shall pay to the Department of Revenue the taxes due the Department. In addition to the taxes levied under Chapter 105 of the General Statutes, the local board shall pay to the Department one third of the mixed beverages surcharge required by G.S. 18B-804(b)(8).

(3) Each month the local board shall pay to the Department of Human Resources six and two-thirds percent ($6\frac{2}{3}\%$) of the mixed beverages surcharge required by G.S. 18B-804(b)(8). The Department of Human Resources shall spend those funds for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse.

(4) Each month the local board shall pay to the county commissioners of the county where the charge is collected the proceeds from the bottle charge required by G.S. 18B-804(b)(6), to be spent by the county commissioners for the purposes stated in subsection (h) of this section.

(h) Expenditure of Alcoholism Funds. — Funds distributed under subdivisions (b)(4) and (c)(3) of this section shall be spent for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse. The minutes of the board of county commissioners or local board spending funds allocated under this subsection shall describe the activity for which the funds are to be spent. Any agency or person receiving funds from the

county commissioners or local board under this subsection shall submit an annual report to the board of county commissioners or local board from which funds were received, describing how the funds were spent.

(i) Calculation of Statutory Distributions When Liquor Sold at Less Than Uniform Price. — If a local board sells liquor at less than the uniform State price, distributions required by subsections (b) and (c) shall be calculated as though the liquor was sold at the uniform price. (1981, c. 412, s. 2; c. 747, s. 52; 1983, c. 713, ss. 102-104; 1985 (Reg. Sess., 1986), c. 1014, s. 116.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Local Modification. — Town of Wallace: 1987, c. 94.

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243, contains a severability clause.

Effect of Amendments. —

The 1985 amendment, effective April 10, 1985, added subsection (i).

The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, rewrote the second sentence of subdivision (b)(3), which read "The Department of Human Resources shall spend those funds on treatment of alcoholism or for research or education on alcohol abuse", and rewrote the first sentence of subsection (h), which read "Funds distributed under subdivisions (b)(4) and (c)(3) of this section shall be spent for treatment of alcoholism, or for research or education on alcohol abuse."

CASE NOTES

Cited in North Carolina Ass'n of ABC Bds. v. Hunt, 76 N.C. App. 290, 332 S.E.2d 693 (1985).

Article 9.

Issuance of Permits.

§ 18B-900. Qualifications for permit.

(a) Requirements. — To be eligible to receive and to hold an ABC permit, a person shall:

(1) Be at least 21 years old, unless the person is a manager of a business selling only malt beverages and unfortified wine, in which case the person shall be at least 19 years old;

(2) Be a resident of North Carolina unless:

a. He is an officer, director or stockholder of a corporate applicant or permittee and is not a manager or otherwise responsible for the day-to-day operation of the business; or

b. He has executed a power of attorney designating a qualified resident of this State to serve as attorney in fact for the purposes of receiving service of process and managing the business for which permits are sought; or

c. He is applying for a nonresident malt beverage vendor permit, a nonresident wine vendor permit, or a vendor representative permit;

(3) Not have been convicted of a felony within three years, and, if convicted of a felony before then, shall have had his citizenship restored;

(4) Not have been convicted of an alcoholic beverage offense within two years;
(5) Not have been convicted of a misdemeanor controlled substance offense within two years; and
(6) Not have had an alcoholic beverage permit revoked within three years.
(7) Not have, whether as an individual or as an officer, director, shareholder or manager of a corporate permittee, an unsatisfied outstanding final judgment that was entered against him in an action under Article 1A of this Chapter.

To avoid undue hardship, however, the Commission may decline to take action under G.S. 18B-104 against a permittee who is in violation of subdivisions (3), (4), or (5).

(c) Who Must Qualify; Exceptions. — For an ABC permit to be issued to and held for a business, each of the following persons associated with that business must qualify under subsection (a):

(1) The owner of a sole proprietorship;
(2) Each member of a firm, association or general partnership;
(2a) Each general partner in a limited partnership;
(3) Each officer, director and owner of more than twenty-five percent (25%) of the stock of a corporation except that the requirement of subdivision (a)(1) does not apply to such an officer, director, or stockholder unless he is a manager or is otherwise responsible for the day-to-day operation of the business;
(4) The manager of an establishment operated by a corporation other than an establishment with only off-premises malt beverage, off-premises unfortified wine, or off-premises fortified wine permits;
(5) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

(1949, c. 974, ss. 1, 2; 1963, c. 119; c. 426, s. 12; 1965, c. 326; 1971, c. 872, s. 1; 1973, c. 758, s. 2; c. 1012; 1975, c. 19, s. 5; 1977, c. 70, s. 19.1; c. 668, s. 3; c. 977, ss. 1, 2; 1979, c. 286, s. 4; 1981, c. 412, s. 2; c. 747, ss. 53, 54; 1981 (Reg. Sess., 1982), c. 1262, ss. 13, 14; 1983, c. 435, ss. 32, 39; 1987, c. 136, ss. 7, 8.)

Only Part of Section Set Out. — As the rest of the section was not affected, it is not set out.

Editor's Note. —

Subsection (a) of this section is set out to correct an error in subdivision (a)(5) in the main volume.

Effect of Amendments. —

The 1987 amendment, effective May 4, 1987, inserted "general" in subdivision (c)(2), and added subdivision (c)(2a).

§ 18B-901. Issuance of permits.

CASE NOTES

ABC Permit Preempts Municipal Zoning Ordinance. — In case in which petitioner, without objection by respondent board, argued that the decision of the ABC Commission to grant him a permit preempted respondent's denial of his special exception use permit request since the zoning ordinance, upon which respondent's denial was based, attempted to regulate the sale of alcoholic beverages, which is a violation of State law, the trial court did not err in concluding that petitioner, as the holder of a valid ABC permit issued by the State

Alcoholic Beverage Control Commission, was entitled to be issued a city beer license, and in ordering the tax collector of the city to issue any city license. In re Melkonian, — N.C. App. —, 355 S.E.2d 503 (1987).

§ 18B-906. Applicability of Administrative Procedure Act.

CASE NOTES

Petition for Review of Permit's Denial. — Where application for an ABC permit was initially denied by commission on Dec. 9, 1985, this denial was clearly a commission action on "issuance" of an ABC permit, and, pursuant to the provisions of this section, the ruling on the application became a "contested case" for purposes of the Administrative Procedure Act on Dec. 9, 1985. Therefore, § 150A-45, which required petitions for review to be filed in Wake County, was applicable, rather than § 150B-45, and the trial court properly dismissed petition for judicial review, which had been filed in Craven County. In re Melkonian, — N.C. App. —, 355 S.E.2d 798 (1987).

Article 10.

Retail Activity.

§ 18B-1000. Definitions concerning establishments.

The following requirements and definitions shall apply to this Chapter:

(8) Sports Club. — An establishment substantially engaged in the business of providing athletic facilities. The sports club can either be open to the general public or for members and their guests. Sports clubs shall only include golf courses. To qualify as a sports club, an establishment's gross receipts for club activities shall be greater than its gross receipts for alcoholic beverages. This provision does not prohibit sports club from operating a restaurant. Receipts for food shall be included in with the club activity fee.

(9) Congressionally Chartered Veterans Organizations. — An establishment that is organized as a federally chartered, nonprofit veterans organization, and is operated solely for patriotic or fraternal purposes. (1905, c. 498, ss. 6-8; Rev., ss. 3526, 3534; C.S., s. 3371; 1937, c. 49, ss. 12, 16, 22; c. 411; 1955, c. 999; 1967, c. 222, ss. 1, 8; c. 1256, s. 3; 1969, c. 1018; 1971, c. 872, s. 1; 1973, c. 1226; 1977, c. 176, s. 1; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 15; 1983, c. 583, s. 1; c. 896, s. 5; 1987, c. 307, s. 1; c. 391, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — Session Laws 1987, c. 307, s. 1, effective June 8, 1987, added subdivision (8).

Session Laws 1987, c. 391, s. 1, effective July 1, 1987, added subdivision (9).

CASE NOTES

The right to sell beer and wine has its foundation in a validly issued permit and does not exist as a constitutional or property right. AGL, Inc. v. N.C. ABC Comm'n, 68 N.C. App. 604, 315 S.E.2d 718 (1984).

Cited in In re Melkonian, — N.C. App. —, 355 S.E.2d 503 (1987).

§ 18B-1001. Kinds of ABC permits; places eligible.

When the issuance of the permit is lawful in the jurisdiction in which the premises is located, the Commission may issue the following kinds of permits:

(1) On-Premises Malt Beverage Permit. — An on-premises malt beverage permit authorizes the retail sale of malt beverages for consumption on the premises and the retail of sale of malt beverages in the manufacturer's original container for consumption off the premises. The permit may be issued for any of the following:
   a. Restaurants;
   b. Hotels;
   c. Eating establishments;
   d. Food businesses;
   e. Retail businesses;
   f. Private clubs;
   g. Convention centers;
   h. Community theatres.

   The permit may also be issued to certain breweries as authorized by G.S. 18B-1104(7).

(3) On-Premises Unfortified Wine Permit. — An on-premises unfortified wine permit authorizes the retail sale of unfortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued for any of the following:
   a. Restaurants;
   b. Hotels;
   c. Eating establishments;
   d. Private clubs;
   e. Convention centers;
   f. Cooking schools;
   g. Community theatres[;]
   h. Winery.

(4) Off-Premises Unfortified Wine Permit. — An off-premises unfortified wine permit authorizes the retail sale of unfortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued for retail businesses. The permit may also be issued for a winery for sale of its own unfortified wine.

(5) On-Premises Fortified Wine Permit. — An on-premises fortified wine permit authorizes the retail sale of fortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued for any of the following:

a. Restaurants;
b. Hotels;
c. Private clubs;
d. Community theatres[;]
e. Winery.

(7) Brown-bagging Permit. — A brown-bagging permit authorizes each individual patron of an establishment, with the permission of the permittee, to bring up to four liters of fortified wine or spirituous liquor, or four liters of the two combined, onto the premises and to consume those alcoholic beverages on the premises. The permit may be issued for any of the following:
a. Restaurants;
b. Hotels;
c. Private clubs;
d. Community theaters;
e. Congressionally-chartered veterans organizations.

(10) Mixed Beverages Permit. — A mixed beverages permit authorizes the retail sale of mixed beverages for consumption on the premises. The permit also authorizes a mixed beverages permittee to obtain a purchase-transportation permit under G.S. 18B-403 and 18B-404, and to use for culinary purposes spirituous liquor lawfully purchased for use in mixed beverages. The permit may be issued for any of the following:
a. Restaurants;
b. Hotels;
c. Private clubs;
d. Convention centers;
e. Community theatres;
f. Nonprofit and political organizations.

(1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c, 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, ss. 16, 17, 22; 1983, c. 457, s. 3; c. 583, ss. 2-5; 1985, c. 89, ss. 1-3; c. 596, s. 1; 1987, c. 391, s. 2; c. 434, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. —

Session Laws 1985, c. 89, ss. 1-3, effective April 12, 1985, added paragraph h of subdivision (3), substituted "retail businesses" for "food businesses" in the second sentence of subdivision (4), and added paragraph e of subdivision (5).

Session Laws 1985, c. 596, s. 1, effective July 4, 1985, added the last paragraph of subdivision (1).

Session Laws 1987, c. 391, s. 2, effective July 1, 1987, substituted "an establishment" for "a business" in the first sentence of the introductory language of subdivision (7), substituted "theaters" for "theatres" at the end of paragraph (7)d, and added paragraph (7)e.

Session Laws 1987, c. 434, s. 1, effective June 19, 1987, added paragraph (10)f.

Legal Periodicals. — For comment, "Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated," see 19 Wake Forest L. Rev. 1013 (1983).

§ 18B-1002. Special one-time permits.

(a) Kinds of Permits. — In addition to the other permits authorized by this Chapter, the Commission may issue permits for the following activities:

(1) A permit may be issued to a person who acquires ownership or possession of alcoholic beverages through bankruptcy, inheritance, foreclosure, judicial sale, or other special occurrence, and who does not already have a permit authorizing the sale of that kind of alcoholic beverage. The permit may authorize the sale or other disposition of the alcoholic beverages in a manner prescribed by the Commission.

(2) A permit may be issued to a nonprofit organization to allow the retail sale of malt beverages, unfortified wine, or fortified wine, or to allow brown-bagging, at a single fund-raising event of that organization. A permit for this purpose shall not be issued to the same organization more than once during each quarter, and shall not be issued for the sale of any kind of alcoholic beverage in a jurisdiction where the sale of that alcoholic beverage is not lawful.

(3) A permit may be issued to a permittee who is going out of business to authorize the sale or other disposition of his alcoholic beverages stock in a manner that would not otherwise be authorized under his permit.

(4) A permit may be issued to a collector of wine or decorative decanters of spirituous liquor authorizing that person to bring into the State, transport, or possess as a collector, a greater amount of those alcoholic beverages than is otherwise authorized by this Chapter, or to sell those alcoholic beverages in a manner prescribed by the Commission.

(5) A permit may be issued to a nonprofit organization or a political organization to serve wine, malt beverages, and spirituous liquor at a ticketed event held to allow the organization to raise funds. For purposes of this subdivision "nonprofit organization" means an organization that is exempt from taxation under Section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code and is exempt under similar provisions of the General Statutes as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic, or veterans' organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad or a bona fide homeowners' or property owners' association. For purposes of this subdivision "political organization" means an organization covered by the provisions of G.S. 163-96(a)(1) or (2) or a campaign organization established by or for a person who is a candidate who has filed a notice of candidacy, paid the filing fees or filed the required petition, and been certified as a candidate for one of the offices listed in G.S. 163-1. The issuance of this permit will also allow the issuance of a purchase-transportation permit under G.S. 18B-403 and 18B-404 and the use for culinary purposes of spirituous liquor lawfully purchased for use in mixed beverages.

(1977, c. 854, s. 1; 1981, c. 412, s. 2; 1987, c. 434, s. 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective June 19, 1987, added subdivision (a)(5).

Legal Periodicals. — For comment, "Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated," see 19 Wake Forest L. Rev. 1013 (1983).

§ 18B-1004. Hours for sale and consumption.

(b) Daylight Saving Time. — From the first Sunday in April until the last Sunday in October, sales of alcoholic beverages may continue until 2:00 A.M. rather than 1:00 A.M., and consumption of alcoholic beverages may continue until 2:30 A.M. rather than 1:30 A.M., on any licensed premises.

(e) This section does not prohibit at any time the wholesale delivery and sale of unfortified wine, fortified wine, and malt beverages to retailers issued permits pursuant to G.S. 18B-1001. (1943, c. 339, ss. 1-3; 1949, c. 974, s. 12; 1951, c. 997, s. 1; 1953, c. 675, s. 4; 1963, c. 426, ss. 7-9, 12; 1969, c. 1131; 1971, c. 872, s. 1; 1973, cc. 56, 153; 1979, c. 286, s. 3; 1981, c. 412, s. 2; 1987, c. 35; c. 308.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — Session Laws 1987, c. 35, effective March 27, 1987, substituted "first Sunday in April" for "last Sunday in April" in subsection (b).

Session Laws 1987, c. 308, effective June 8, 1987, added subsection (e).

§ 18B-1005. Conduct on licensed premises.

CASE NOTES

Cited in State v. Campbell, 79 N.C. App. 468, 339 S.E.2d 674 (1986).

§ 18B-1006. Miscellaneous provisions on permits.

(a) School and College Campuses. — No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college unless that business is a hotel with a mixed beverages permit or a special occasion permit.

(h) Purchase Restrictions. — A retail permittee may purchase malt beverages, unfortified wine, or fortified wine only from a wholesaler or importer who maintains a place of business in this State and has the proper permit.

(i) Tour Boats. — The Commission may issue permits to boats that conduct regularly scheduled tours upon the rivers or waterways of this State under the following conditions:

(1) A boat shall serve meals on each tour and shall have a dining area with seating for at least 36 people;

(2) A boat's gross receipts from food and non-alcoholic beverages shall be greater than its gross receipts from alcoholic beverages;

(3) A boat may hold the permits listed in G.S. 18B-1001(1), (3), (5), and (10), but no off-premises sales may be made pursuant to those permits;

(4) A boat shall dock in an area where issuance of the permits listed in subdivision (3) is legal, and all passengers shall enter and leave the boat there. While tour passengers are on board, the boat may not dock at any other place except for an emergency. The boat's permits are valid during these tours, regardless of whether the boat crosses into an area where sales are not legal; and

(5) A boat may not serve or sell any alcoholic beverages except during tours.

(j) Recreation/Sports Districts. — The Commission may issue permits for the sale of malt beverages and unfortified wine in recreation/sports districts when they are wholly located in a County where there are two or more municipalities that are wholly located in the County that allow the sale of alcoholic beverages while the sale of any alcoholic beverages is prohibited in the nonincorporated areas of the County, and the area to be included in the recreation/sports district has been previously identified by one of those municipalities through a resolution of intent for annexation. The issuance of the permits shall be upon the formal written request of the City indicating the intent to annex the area or upon formal written request of the County Commissioners with the request designating the geographic boundaries of the district in which the permits may be issued.

For the purposes of this act a recreation/sports district shall not exceed one-half mile in diameter and shall host at least five sporting events each year. (1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 23; 1985, c. 114, s. 2; c. 301; 1987, c. 515; c. 760.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Section 14 of Session Laws 1985, c. 114, provides that the act does not affect licenses issued for the period May 1, 1984, to April 30, 1985.

Effect of Amendments. —

Session Laws 1985, c. 114, s. 2, effective April 23, 1985, added subsection (h).

Session Laws 1985, c. 301, effective May 31, 1985, added subsection (i).

Session Laws 1987, c. 515, effective June 30, 1987, added subsection (j).

Session Laws 1987, c. 760, effective August 10, 1987, added "or a special occasion permit" at the end of subsection (a).

Article 11.

Commercial Activity.

§ 18B-1101. Authorization of unfortified winery permit.

The holder of an unfortified winery permit may:

(1) Manufacture unfortified wine;

(2) Sell, deliver and ship unfortified wine in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that wine may be sold to nonresident wholesalers only when the purchase is not for resale in this State;

(3) Ship its wine in closed containers to individual purchasers inside and outside this State;

(4) Furnish or sell "short-filled" packages, on which State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;
(5) Regardless of the results of any local wine election, sell the winery's wine for on- or off-premise consumption upon obtaining the appropriate permit under G.S. 18B-1001.

A sale under subdivision (4) shall not be considered a retail or wholesale sale under the ABC laws. (1973, c. 511, ss. 1, 2; 1975, c. 411, s. 6; 1979, c. 224; 1981, c. 412, s. 2; c. 747, s. 60; 1985, c. 89, s. 4.)

Effect of Amendments. — The 1985 amendment, effective April 12, 1985, substituted "on- or off-premise consumption upon obtaining the appropriate permit under G.S. 18B-1001" for "off-premises consumption upon obtaining a permit under G.S. 18B-1001(4)" at the end of subdivision (5).

§ 18B-1102. Authorization of fortified winery permit.

The holder of a fortified winery permit may:
(1) Manufacture, purchase, import and transport brandy and other ingredients and equipment used in the manufacture of fortified wine;
(2) Sell, deliver and ship fortified wine in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that wine may be sold to nonresident wholesalers only when the purchase is not for resale in this State;
(3) Ship its wine in closed containers to individual purchasers inside and outside this State;
(4) Furnish or sell "short-filled" packages, on which State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;
(5) Regardless of the results of any local wine election, sell the winery's wine for on- or off-premise consumption upon obtaining the appropriate permit under G.S. 18B-1001.

A sale under subdivision (4) shall not be considered a retail or wholesale sale under the ABC laws. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 411, s. 6; c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 511, ss. 1, 2; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 224; c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; c. 747, s. 60; 1985, c. 89, s. 5.)

Effect of Amendments. — The 1985 amendment, effective April 12, 1985, substituted "for on- or off-premise consumption upon obtaining the appropriate permit under G.S. 18B-1001" for "for off-premise consumption upon obtaining a permit under G.S. 18B-1001(6)" at the end of subdivision (5).

§ 18B-1104. Authorization of brewery permit.

The holder of a brewery permit may:

(1) Manufacture malt beverages;

(2) Purchase malt, hops and other ingredients used in the manufacture of malt beverages;

(3) Sell, deliver and ship malt beverages in closed containers to wholesalers licensed under this Chapter as authorized by the ABC laws, except that malt beverages may be sold to nonresident wholesalers only when the purchase is not for resale in this State;

(4) Receive malt beverages manufactured by the permittee in some other state for transshipment to dealers in other states;

(5) Furnish or sell marketable malt beverage products, or packages which do not conform to the manufacturer's marketing standards, if State taxes have been or will be paid, to its employees for the use of the employees or their families and guests in this State;

(6) Give its products to its employees and guests for consumption on its premises;

(7) In areas where the sale is legal, sell the brewery's malt beverages at the brewery upon receiving a permit under G.S. 18B-1001(1). This authorization shall apply to breweries that produce fewer than 62,000 gallons of malt beverages per year.

A sale or gift under subdivision (5) or (6) shall not be considered a retail or wholesale sale under the ABC laws. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1985, c. 596, s. 2.)

Effect of Amendments. — The 1985 amendment, effective July 4, 1985, added subdivision (7).

§ 18B-1115. Commercial transportation.

(g) State Warehouse Carrier. — The Commission may exempt a carrier for the State or a local board warehouse from any of the requirements of this section provided that it determines that the requirements of this section are otherwise satisfied. (1923, c. 1, s. 15; C.S., s. 3411(o); 1939, c. 158, s. 503; 1971, c. 872, s. 1; 1975, c. 411, s. 7; 1977, c. 70, s. 20; c. 176, s. 7; 1979, c. 286, s. 5; 1981, c. 412, s. 2; c. 747, s. 63; 1987, c. 136, s. 9.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective May 4, 1987, inserted "or a local board" preceding "warehouse" in subsection (g).

§ 18B-1118. Purchase restrictions.

The holder of a malt beverage wholesaler, wine wholesaler, malt beverage importer, wine importer, or bottler permit may not purchase malt beverages or wine for resale in this State from a nonresident who does not have the proper nonresident vendor permit. (1985, c. 114, s. 3.)

Editor's Note. — Session Laws 1985, c. 114, s. 3 is effective upon ratification. The act was ratified April 23, 1985.

Session Laws 1985, c. 114, s. 14 provides that the act does not affect licenses issued for the period May 1, 1984, to April 30, 1985.

Article 12.

Wine Distribution Agreements.

§ 18B-1204. Cancellation.

Notwithstanding the terms, provisions, or conditions of any agreement, no winery may amend, cancel, terminate, or refuse to continue to renew any agreement, or cause a wholesaler to resign from an agreement, unless good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuation, or resignation. "Good cause" does not include a change in ownership of a winery. "Good cause" does include:

(1) Revocation of the wholesaler's permit or license to do business in this State;
(2) Bankruptcy or receivership of the wholesaler;
(3) Assignment for the benefit of creditors or similar disposition of the assets of the wholesaler; or
(4) Failure of the wholesaler to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the winery, including a substantial failure by a wine wholesaler to:
   a. Maintain a sales volume of the brands offered by the winery, or
   b. Render services comparable in quality, quantity, or volume to the sales volumes maintained and services rendered by other wholesalers of the same brands within the State.

In any determination as to whether a wholesaler has failed to comply substantially, without reasonable excuse or justification, with any reasonable and material requirement imposed upon him by the winery, consideration shall be given to the relative size, population, geographical location, number of retail outlets, demand for the products applicable to the territory of the wholesaler in question and to comparable territories, and any reasonable sales quota set by the agreement. The burden of proving good cause for amendment, termination, cancellation, nonrenewal, noncontinuation, or resignation is on the winery. (1983, c. 85, s. 2.)

Editor's Note. — The section above is set out to correct two typographical errors in the main volume.

§ 18B-1205. Notice of intent to terminate.

CASE NOTES

Commission, Not Court, Initially Conducts Hearing. — Petition filed by distributor with the ABC Commission, asking for a hearing on supplier's appointment of another distributor as its representative in the Charlotte-Mecklenburg marketing area and its termination of wholesale distribution agreement with petitioner and for official notification from the Commission to supplier that pursuant to § 18B-1200 et seq. the distribution agreement would continue in effect pending the Commission's decision and any judicial review, was improperly dismissed by the trial court, as this section expressly gives authority to the Commission to conduct a hearing on such a contract dispute, and directly spells out what the status of a contract shall be while under review by both the agency and the judiciary. Empire Distribs. of N.C., Inc. v. North Carolina ABC Comm'n, — N.C. App. —, 355 S.E.2d 524 (1987).

Chapter 19.

Offenses Against Public Morals.

Article 1.

Abatement of Nuisances.

§ 19-1. What are nuisances under this Chapter.

(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance.

(Pub. Loc. 1913, c. 761, s. 25; 1919, c. 288; C.S., s. 3180; 1949, c. 1164; 1967, c. 142; 1971, c. 655; 1977, c. 819, ss. 1, 2; 1981, c. 412, s. 4; c. 747, s. 66.)

Only Part of Section Set Out. — As the rest of the section was not affected, it is not set out.

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in subsection (a).

Legal Periodicals. —

For article, "Obscenity: The Justices' (Not So) New Robes," see 8 Campbell L. Rev. 387 (1986).

§ 19-1.1. Definitions.

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19-1(a), the following definitions shall apply:

(1) "Knowledge" or "knowledge of such nuisance" means having knowledge of the contents and character of the patently offensive sexual conduct which appears in the lewd matter, or knowledge of the acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or prostitution which occur on the premises.

(2) "Lewd matter" is synonymous with "obscene matter" and means any matter:

a. Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and
b. Which depicts patently offensive representations of:
1. Ultimate sexual acts, normal or perverted, actual or simulated;
2. Masturbation, excretory functions, or lewd exhibition of the genitals or genital area;
3. Masochism or sadism; or
4. Sexual acts with a child or animal.

Nothing herein contained is intended to include or proscribe any writing or written material, nor to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, educational, or scientific value.

(3) "Lewdness" is synonymous with obscenity and shall mean the act of selling, exhibiting or possessing for sale or exhibition lewd matter.

(4) "Matter" means a motion picture film or a publication or both.

(5) "Motion picture film" shall include any:
a. Film or plate negative;
b. Film or plate positive;
c. Film designed to be projected on a screen for exhibition;
d. Films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;
e. Video tape or any other medium used to electronically reproduce images on a screen.

(6) "Person" means any individual, partnership, firm, association, corporation, or other legal entity.

(7) "Place" includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent or not, or the ground itself, but excluding a private dwelling place not used for a profit.

(8) "Publication" shall include any book, magazine, pamphlet, illustration, photograph, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.

(9) "Sale" means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquor" in subdivision (1).

Subdivision (2) has been set out in order to correct an error in the indentation of the second paragraph thereof as it appears in the main volume.

Legal Periodicals. —

For article, "Regulation of Pornography — The North Carolina Approach," see 21 Wake Forest L. Rev. 263 (1986).

§ 19-1.2. Types of nuisances.

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

(6) Every place which, as a regular course of business, is used for the purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66.)

Only Part of Section Set Out. — As the rest of the section was not affected, it is not set out.

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquor" in subdivision (6).

§ 19-1.3. Personal property as a nuisance; knowledge of nuisance.

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

(1) All moneys paid as admission price to the exhibition of any lewd film found to be a nuisance;

(2) All valuable consideration received for the sale of any lewd publication which is found to be a nuisance;

(3) All money or other valuable consideration received or used in gambling, prostitution, the illegal sale of alcoholic beverages or the illegal sale of substances proscribed under the North Carolina Controlled Substances Act, as well as the furniture and movable contents of a place used in connection with such prohibited conduct.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding. (1977, c. 819, s. 3; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in subdivision (3).

§ 19-2.1. Action for abatement; injunction.

CASE NOTES

Quoted in State v. Felts, 79 N.C. App. 205, 339 S.E.2d 99 (1986).

§ 19-3. Priority of action; evidence.

(b) In such action, an admission or finding of guilt of any person under the criminal laws against lewdness, assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, or the illegal possession or sale of substances proscribed by the North Carolina Controlled Substances Act, at any such place, is admissible for the purpose of proving the existence of said nuisance, and is evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining said nuisance.

(Pub. Loc. 1913, c. 761, s. 27; 1919, c. 288; C.S., s. 3182; 1971, c. 528, s. 6; 1973, c. 47, s. 2; 1977, c. 819, s. 5; 1981, c. 412, s. 4; c. 747, s. 66.)

Only Part of Section Set Out. — As the rest of the section was not affected, it is not set out.

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in subsection (b).

CASE NOTES

Applied in State ex rel. Gilchrist v. Cogdill, 74 N.C. App. 133, 327 S.E.2d 647 (1985).

§ 19-5. Content of final judgment and order.

If the existence of a nuisance is admitted or established in an action as provided for in this Chapter an order of abatement shall be entered as a part of the judgment in the case, which judgment and order shall perpetually enjoin the defendant and any other person from further maintaining the nuisance at the place complained of, and the defendant from maintaining such nuisance elsewhere within the jurisdiction of this State. Lewd matter, illegal alcoholic beverages, gambling paraphernalia, or substances proscribed under the North Carolina Controlled Substances Act shall be destroyed and not be sold.

Such order may also require the effectual closing of the place against its use thereafter for the purpose of conducting any such nuisance.

The provisions of this Article, relating to the closing of a place with respect to obscene or lewd matter, shall not apply in any order of the court to any theatre or motion picture establishment which does not, in the regular, predominant, and ordinary course of its business, show or demonstrate lewd films or motion pictures, as defined in this Article, but any such establishment may be permanently enjoined from showing such film judicially determined to be

obscene hereunder and such film or motion picture shall be destroyed and all proceeds and moneys received therefrom, after the issuance of a preliminary injunction, forfeited. (Pub. Loc. 1913, c. 761, s. 29; 1919, c. 288; C.S., s. 3184; 1977, c. 819, s. 6; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in the first paragraph.

CASE NOTES

Cited in State ex rel. Brown v. Smith, 74 N.C. App. 599, 328 S.E.2d 810 (1985).

§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to

revert and vest in such owner. (Pub. Loc. 1913, c. 761, s. 30; 1919, c. 288; C.S., s. 3185; 1977, c. 819, s. 7; 1981, c. 412, s. 4; c. 747, s. 66.)

Editor's Note. — Pursuant to Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 412, s. 4, as amended by Session Laws 1981, c. 747, s. 66, "alcoholic beverages" has been substituted for "intoxicating liquors" in the third paragraph.

Chapter 19A.

Protection of Animals.

Article 3.

Animal Welfare Act.

Article 3.

Animal Welfare Act.

§ 19A-23. Definitions.

For the purposes of this Article, the following terms, when used in the Article or the rules or orders made pursuant thereto, shall be construed respectively to mean:

(9) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves rapid unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent which causes painless loss of consciousness, and death during such loss of consciousness.

(1977, 2nd Sess., c. 1217, s. 4; 1979, c. 734, s. 1; 1987, c. 827, s. 61.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "and regulations" in the introductory language and substituted "humane" for "human" in subdivision (9).

§ 19A-24. Powers of Board of Agriculture.

The Board of Agriculture may:

(1) Establish standards for the care of animals at animal shelters, boarding kennels, pet shops, and public auctions.

(2) Prescribe the manner in which animals may be transported to and from registered or licensed premises.

(3) Require licensees and holders of certificates to keep records of the purchase and sale of animals and to identify animals at their establishments.

(4) Adopt rules to implement this Article, including federal regulations promulgated under Title 7, Chapter 54, of the United States Code. (1977, 2nd Sess., c. 1217, s. 5; 1987, c. 827, s. 62.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote this section.

§ 19A-25. Employees; investigations; right of entry.

For the enforcement of the provisions of this Article, the Director is authorized, subject to the approval of the Commissioner to appoint employees as are necessary in order to carry out and enforce the provisions of this Article, and to assign them interchangeably with other employees of the Animal Health Division. The Director shall cause the investigation of all reports of violations of the provisions of this Article, and the rules adopted pursuant to the provisions hereof; provided further, that if any person shall deny the Director or his representative admittance to his property, either person shall be entitled to secure from any superior court judge a court order granting such admittance. (1977, 2nd Sess., c. 1217, s. 6; 1987, c. 827, s. 63.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "and regulations" following "rules" in the second sentence.

§ 19A-26. Certificate of registration required for animal shelter.

No person shall operate an animal shelter unless a certificate of registration for such animal shelter shall have been granted by the Director. Application for such certificate shall be made in the manner provided by the Director. No fee shall be required for such application or certificate. Certificates of registration shall be valid for a period of one year or until suspended or revoked and may be renewed for like periods upon application in the manner provided. (1977, 2nd Sess., c. 1217, s. 7; 1987, c. 827, s. 64.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "for more than one year subsequent to January 1, 1979" following "animal shelter" in the first sentence.

§ 19A-27. License required for operation of pet shop.

No person shall operate a pet shop unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license shall be for the fiscal year and the license fee shall be twenty-five dollars ($25.00) for each license period or part thereof beginning with the first day of the fiscal year. (1977, 2nd Sess., c. 1217, s. 8; 1987, c. 827, s. 65.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "as defined in this Article for more than six months subsequent to January 1, 1979" following "pet shop" in the first sentence.

§ 19A-28. License required for public auction or boarding kennel.

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be twenty-five dollars ($25.00) for each license period or part thereof beginning with the first day of the fiscal year. (1977, 2nd Sess., c. 1217, s. 9; 1987, c. 827, s. 65.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "as defined in this Article for more than six months subsequent to January 1, 1979" following "boarding kennel" in the first sentence.

§ 19A-29. License required for dealer.

No person shall be a dealer unless a license to deal shall have been granted by the Director to such person. Application for such license shall be in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be twenty-five dollars ($25.00) for each license period or part thereof, beginning with the first day of the fiscal year. (1977, 2nd Sess., c. 1217, s. 10; 1987, c. 827, s. 66.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "as defined in this Article for more than six months after January 1, 1979" following "dealer" in the first sentence.

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

(1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;

(2) Willful disregard or violation of this Article or any rules issued pursuant thereto;

(3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;

(4) Allowing one's license under this Article to be used by an unlicensed person;

(5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;

(6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in con-

nection with the business of a public auction, commercial kennel, pet shop, or dealer;

(7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;

(8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspensed, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect. (1977, 2nd Sess., c. 1217, s. 11; 1987, c. 827, s. 67.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, deleted "regulations or" preceding "rules" in subdivision (2), substituted "the rules adopted under" for "with the intent of the rules and regulations which may be promulgated pursuant to the authority of" in subdivision (3), and rewrote the third paragraph.

§ 19A-32. Procedure for review of Director's decisions.

A denial, suspension, or revocation of a certificate or license under this Article shall be made in accordance with Chapter 150B of the General Statutes. (1977, 2nd Sess., c. 1217, s. 13; 1987, c. 827, s. 68.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, rewrote this section.

§ 19A-37. Application of Article.

This Article shall not apply to a place or establishment which is operated under the immediate supervision of a duly licensed veterinarian as a hospital where animals are harbored, boarded, and cared for incidental to the treatment, prevention, or alleviation of disease processes during the routine practice of the profession of veterinary medicine. This Article shall not apply to any dealer, pet shop, public auction, commercial kennel or research facility during the period such dealer or research facility is in the possession of a valid license or registration granted by the Secretary of Agriculture pursuant to Title 7, Chapter 54, of the United States Code. This Article shall not apply to any individual who occasionally boards an animal on a noncommercial basis, although such individual may receive nominal sums to cover the cost of such boarding. (1977, 2nd Sess., c. 1217, s. 18; 1987, c. 827, s. 69.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, substituted "Title 7, Chapter 54, of the United States Code" for "the provisions of United States Public Law 89-544" in the second sentence.

Chapter 20.

Motor Vehicles.

Article 1.

Division of Motor Vehicles.

Article 2.

Uniform Driver's License Act.

Article 2A.

Afflicted, Disabled or Handicapped Persons.

Article 2B.

Special Identification Cards for Nonoperators.

Article 3.

Motor Vehicle Act of 1937.

Part 2. Authority and Duties of Commissioner and Division.

Part 3. Registration and Certificates of Titles of Motor Vehicles.

Part 3A. Salvage Titles.

Article 1.

Division of Motor Vehicles.

§ 20-1. Division of Motor Vehicles of the Department of Transportation; powers and duties.

The Department of Motor Vehicles is hereby redesignated the Division of Motor Vehicles of the Department of Transportation. The Division of Motor Vehicles shall have the same powers and duties as were held by the Department of Motor Vehicles except as otherwise provided in this Article. All powers, duties and functions relating to the collection of motor fuel taxes and the collection of the gasoline and oil inspection taxes shall continue to be vested in and exercised by the Secretary of Revenue, and wherever it is now provided by law that reports shall be filed with the Secretary of Revenue, or Department of Revenue, as a basis for collecting the motor fuel or gasoline and oil inspection taxes, or enforcing any of the laws regarding the motor fuel or gasoline and oil inspection taxes, such reports shall continue to be made to the Department of Revenue and the Commissioner of Motor Vehicles shall make available to the Secretary of Revenue all information from files of the Division of Motor Vehicles which the Secretary of Revenue may request to enable him to better enforce the law with respect to the collection of such taxes. Nothing in this Article shall deprive the Utilities Commission of any of the duties or powers now vested in it with regard to the regulation of motor vehicle carriers. (1941, c. 36, s. 1; 1949, c. 1167; 1973, c. 476, s. 193; 1975, c. 716, s. 5; c. 863; 1987, c. 827, s. 2; c. 847, s. 1.)

Editor's Note. — As to the inapplicability of Articles 2 and 3 of Chapter 150B to the Department of Transportation, except as provided in Chapter 136, see § 150B-1(d).

Effect of Amendments. — Session Laws 1987, c. 827, s. 2, effective August 13, 1987, rewrote the former last sentence of this section to read "Articles 2 and 3 of Chapter 150B of the General Statutes do not apply to rules adopted and actions taken under this Chapter."

Session Laws 1987, c. 847, s. 1, effective October 1, 1987, and applicable to actions brought for claims denied by the State Highway Administrator or by the Director of the Office of State Construction of the Department of Administration on or after that date, deleted the former last sentence of this section.

§ 20-2. Commissioner of Motor Vehicles.

The Division of Motor Vehicles shall be administered by the Commissioner of Motor Vehicles, who shall be appointed by and serve at the pleasure of the Secretary of the Department of Transportation. The Commissioner shall be paid an annual salary to be fixed by the General Assembly in the Current Operations Appropriations Act and allowed his traveling expenses as allowed by law.

In any action, proceeding, or matter of any kind, to which the Commissioner of Motor Vehicles is a party or in which he may have an interest, all pleadings, legal notices, proof of claim, warrants for collection, certificates of tax liability, executions, and other legal documents, may be signed and verified on behalf of the Commis-

sioner of Motor Vehicles by the Assistant Commissioner of Motor Vehicles or by any director or assistant director of any section of the Division of Motor Vehicles or by any other agent or employee of the Division so authorized by the Commissioner of Motor Vehicles. (1941, c. 36, s. 2; 1945, c. 527; 1955, c. 472; 1975, c. 716, s. 5; 1983, c. 717, s. 5; 1983 (Reg. Sess., 1984), c. 1034, s. 164.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1985, substituted reference to the Current Operations Appropriations Act for reference to the Budget Appropriations Act in this section.

§ 20-4.01. Definitions.

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(3a) Chemical Analysis. — A test of the breath or blood of a person to determine his alcohol concentration, performed in accordance with G.S. 20-139.1. The term "chemical analysis" includes duplicate or sequential analyses when necessary or desirable to insure the integrity of test results.

(7) Driver. — The operator of a vehicle, as defined in subdivision (25). The terms "driver" and "operator" and their cognates are synonymous.

(13) Highway. — The entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms "highway" and "street" and their cognates are synonymous.

(24) Nonresident. — Any person whose legal residence is in some state, territory, or jurisdiction other than North Carolina or in a foreign country.

(24a) Offense Involving Impaired Driving. — Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

c. Second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.

d. An offense committed in another jurisdiction substantially equivalent to the offenses in subparagraphs a through c.

e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

(25) Operator. — A person in actual physical control of a vehicle which is in motion or which has the engine running.

The terms "operator" and "driver" and their cognates are synonymous.

(31a) Provisional Licensee. — A person under the age of 18 years.

(32) Public Vehicular Area. — Any area within the State of North Carolina that is generally open to and used by the public for vehicular traffic, including by way of illustration and not limitation any drive, driveway, road, roadway, street, alley, or parking lot upon the grounds and premises of:

a. Any public or private hospital, college, university, school, orphanage, church, or any of the institutions, parks or other facilities maintained and supported by the State of North Carolina or any of its subdivisions; or

b. Any service station, drive-in theater, supermarket, store, restaurant, or office building, or any other business, residential, or municipal establishment providing parking space for customers, patrons, or the public; or

c. Any property owned by the United States and subject to the jurisdiction of the State of North Carolina. (The inclusion of property owned by the United States in this definition shall not limit assimilation of North Carolina law when applicable under the provisions of Title 18, United States Code, section 13.)

The term "public vehicular area" shall also include any beach area used by the public for vehicular traffic as well as any road opened to vehicular traffic within or leading to a subdivision for use by subdivision residents, their guests, and members of the public, whether or not the subdivision roads have been offered for dedication to the public. The term "public vehicular area" shall not be construed to mean any private property not generally open to and used by the public.

(33)(a) Flood Vehicle. — A motor vehicle that has been submerged or partially submerged in water to the extent that damage to the body, engine, transmission, or differential has occurred.

(b) Non-U.S.A. Vehicle. — A motor vehicle manufactured outside of the United States and not intended by the manufacturer for sale in the United States.

(c) Reconstructed Vehicle. — A motor vehicle of a type required to be registered hereunder that has been materially altered from original construction due to removal, addition or substitution of new or used essential parts; and includes glider kits and custom assembled vehicles.

(d) Salvage Motor Vehicle. — Any motor vehicle damaged by collision or other occurrence to the extent that the cost of repairs to the vehicle and rendering the vehicle safe for use on the public streets and highways would exceed seventy-five percent (75%) of its fair retail market value, or a motor vehicle that has been declared a total loss by an insurer. Fair market retail values

shall be as found in the NADA Pricing Guide Book or other publications approved by the Commissioner.

(e) Salvage Rebuilt Vehicle. — A salvage vehicle that has been rebuilt for title and registration.

(f) Junk Vehicle. — A motor vehicle which is incapable of operation or use upon the highways and has no resale value except as a source of parts or scrap, and shall not be titled or registered.

(46) Street. — A highway, as defined in subdivision (13). The terms "highway" and "street" and their cognates are synonymous.

(1973, c. 1330, s. 1; 1975, cc. 94, 208; c. 716, s. 5; c. 743; c. 859, s. 1; 1977, c. 313; c. 464, s. 34; 1979, c. 39; c. 423, s. 1; c. 574, ss. 1-4; c. 667, s. 1; c. 680; 1981, c. 606, s. 3; c. 792, s. 2; 1983, c. 435, s. 8; 1983 (Reg. Sess., 1984), c. 1101, ss. 1-3; 1985, c. 509, s. 6; 1987, c. 607, s. 2; c. 658, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1101, s. 38, makes ss. 3, 8, 13, 16, 22, 23, 34, 35 and 36 of the act effective October 1, 1984, and the remaining sections, except as provided in s. 37, effective upon ratification. Section 37 sets out special provisions with regard to s. 32, which amends § 20-179.3. The act was ratified July 6, 1984.

Subdivision (24) is set out above to correct an error in the main volume.

Sections 20-138 and 20-139, referred to in this section, were repealed by Session Laws 1983, c. 435, s. 23.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment by c. 1101, ss. 1 and 2, effective July 6, 1984, substituted "A test" for "A chemical test" at the beginning of subdivision (3a) and insert "for vehicular traffic" following "generally open to and used by the public" in the introductory language of subdivision (32).

The 1983 (Reg. Sess., 1984) amendent by c. 1101, s. 3, effective October 1, 1984, added subsection (31a).

The 1985 amendment, effective July 1, 1985, rewrote the introductory language, which read "Unless the context otherwise requires, the following words and phrases, for the purpose of this Chapter, shall have the following meanings," added "as defined in subdivision (25)" at the end of the first sentence of subdivision (7), added the second sentence of subdivision (7), in subdivision (13) substituted "Highway" for "Highway or Street" as the subdivision catchline and rewrote the last sentence, which read "The terms 'highway' or 'street' or a combination of the two terms shall be used synonymously," added the last sentence of subdivision (25), and rewrote subdivision (46), defining "Street."

Session Laws 1987, c. 607, s. 2, effective January 1, 1988, rewrote subdivision (33), which formerly defined the term "Reconstructed vehicles."

Session Laws 1987, c. 658, s. 1, effective October 1, 1987, inserted "Second degree murder under G.S. 14-17 or" at the beginning of paragraph (24a)c.

Legal Periodicals. — For note discussing the definition of "driving" under the North Carolina Safe Roads Act, in light of State v. Fields, 77 N.C. App. 404, 335 S.E.2d 69 (1985), see 64 N.C.L. Rev. 127 (1986).

CASE NOTES

Constitutionality. — For case reaffirming the constitutionality of § 20-138.1(a)(2) and subdivision (33a) of this section, see State v. Denning, 316 N.C. 523, 342 S.E.2d 855 (1986).

Alcohol Concentration. — Police officer who had been issued a permit to perform chemical analysis under the authority of § 20-139.1(b) by the Department of Human Resources was permitted by Subdivision (0.2) of this section to express alcohol concentration in terms of 210 liters of breath, as well as 100 milliliters of blood. State v. Midgett, 78 N.C. App. 387, 337 S.E.2d 117 (1985).

"Chemical analyst" for purposes of

§ 20-139.1 includes a person who was validly licensed by the Department of Human Resources to perform chemical analyses immediately prior to the enactment of the Safe Roads Act. To hold otherwise would mean that an individual licensed to perform chemical analyses under one statute would automatically lose his license when the testing procedures are merely recodified in another statute. Obviously the legislature did not intend that result. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

Driver. —

Although distinctions may have been made between driving and operating in prior case law and prior statutes regulating motor vehicles, such a distinction is not supportable under § 20-138.1. Since "driver" is defined in § 20-4.01 simply as an "operator" of a vehicle, the legislature intended the two words to be synonymous. State v. Coker, — N.C. —, 323 S.E.2d 343 (1984).

Although a distinction may have been made between driving and operating in prior case law and statutes regulating vehicles, no such distinction is supportable under this section since a "driver" is defined as an "operator." It is clear that the legislature intended the two words to be synonymous. State v. Dellinger, 316 N.C. App. 523, 327 S.E.2d 609 (1985); State v. Fields, 77 N.C. App. 304, 335 S.E.2d 69 (1985).

Emergency strip adjacent to interstate highways falls within the literal language of the definition of "highway" as contained in this section. State v. Kelley, 65 N.C. App. 159, 308 S.E.2d 720 (1983).

Operator, etc. —

Although distinctions may have been made between driving and operating in prior case law and prior statutes regulating motor vehicles, such a distinction is not supportable under § 20-138.1. Since "driver" is defined in § 20-4.01 simply as an "operator" of a vehicle, the legislature intended the two words to be synonymous. State v. Coker, — N.C. —, 323 S.E.2d 343 (1984).

A horseback rider is an "operator" who is in "control of a vehicle which is in motion" where the horse is ridden upon a street, highway or public vehicular area. State v. Dellinger, 316 N.C. App. 523, 327 S.E.2d 609 (1985).

Evidence held sufficient for a reasonable jury to infer that defendant, who was found asleep in driver's seat in car which had run off the road and into a fence, was under the influence of an impairing substance when he drove the vehicle. State v. Mack, 81 N.C. App. 578, 345 S.E.2d 223 (1986).

One who does not hold legal title to a vehicle cannot obtain owners liability insurance thereon. Nationwide Mut. Ins. Co. v. Edwards, 67 N.C. App. 1, 312 S.E.2d 656 (1984).

Public Vehicular Area. — Evidence held to permit a finding that at the time in question portion of park grounds legally in use as a parking lot was a "public vehicular area" within the meaning and intent of that phrase as used in subdivision (32), so as to permit a conviction under § 20-138.1(a) for impaired driving thereon. State v. Carawan, 80 N.C. App. 151, 341 S.E.2d 96, cert. denied, 317 N.C. 337, 346 S.E.2d 141 (1986).

Evidence held sufficient to permit a finding that handicapped or wheelchair ramp in motel parking lot in front of motel door upon which most of defendant's car had been stopped was part of a "public vehicular area" within the meaning and intent of that phrase as used in subdivision (32). State v. Mabe, — N.C. App. —, 355 S.E.2d 186 (1987).

Under Influence of Impairing Substance. — The offense of impaired driving is proven by evidence that defendant drove a vehicle on any highway in this State while his physical or mental faculties, or both, were "appreciably impaired by an impairing substance." State v. George, 77 N.C. App. 580, 335 S.E.2d 768 (1985).

Vehicles — Legislative Intent. — The North Carolina legislature intended the provisions of the traffic laws of North Carolina applicable to the drivers of "vehicles" to apply to horseback riders irrespective of whether a horse is a vehicle. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

Applied in State v. Bowen, 67 N.C. App. 512, 313 S.E.2d 196 (1984); Indiana Lumbermens Mut. Ins. Co. v. Unigard Indem. Co., 76 N.C. App. 88, 331 S.E.2d 741 (1985); Roseboro Ford, Inc. v. Bass, 77 N.C. App. 363, 335 S.E.2d 214 (1985).

Quoted in Carter v. Holland (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

Cited in Perry v. Aycock, 68 N.C. App. 705, 315 S.E. 791 (1984); State v. Rose, 312 N.C. 441, 323 S.E.2d 339 (1984); State v. Coker, 312 N.C. 432, 323 S.E.2d 343 (1984); State v. Shuping, 312

N.C. 421, 323 S.E.2d 350 (1984); Lawing v. Lawing, 81 N.C. App. 159, 344 S.E.2d 100 (1986).

OPINIONS OF ATTORNEY GENERAL

The parking lot of a restaurant is within the definition of "public vehicular area" under subdivision (32) of this section when the restaurant is closed. See opinion of Attorney General to Mr. James C. Yeatts, III, Assistant District Attorney, 17-B Judicial District, 52 N.C.A.G. 6 (1982).

Section 20-217, a safety statute designed to prevent the passing of a school bus displaying its mechanical stop signal while receiving or discharging passengers, has no application to a "public vehicular area." See opinion of Attorney General to Mr. Alan Leonard, District Attorney, Twenty-Ninth Judicial District, — N.C.A.G. — (Mar. 9, 1987).

Article 1B.

Reciprocal Provisions as to Arrest of Nonresidents.

§ 20-4.20. Division to transmit report to reciprocating state; suspension of license for noncompliance with citation issued by reciprocating state.

CASE NOTES

Section 20-25 creates no right to appeal a suspension under § 20-4.20(b). The General Assembly simply has not yet provided for appeals from suspension under § 20-4.20(b). Palmer v. Wilkins, 73 N.C. App. 171, 325 S.E.2d 697 (1985).

Article 2.

Uniform Driver's License Act.

§ 20-7. Drivers' licenses; expiration; examination; fees.

(a) Except as otherwise provided in this Article, no person shall operate a motor vehicle on a highway unless such person has first been licensed by the Division under the provisions of this Article for the type or class of vehicle being driven. Drivers' licenses shall be classified as follows:

(1) Class "A" which entitles a licensee to drive any vehicle or combination of vehicles, except motorcycles, including all vehicles under Classes "B" or "C."

(2) Class "B" which entitles a licensee to drive a single vehicle weighing over 30,000 pounds gross vehicle weight, any such vehicle towing a vehicle weighing 10,000 pounds gross vehicle weight or less, a single vehicle designed to carry more than 12 passengers and all vehicles under Class "C." A Class "B" license does not entitle the licensee to drive a motorcycle.

(3) Class "C" which entitles a licensee to drive a single vehicle weighing 30,000 pounds gross vehicle weight or less; any such vehicle towing a vehicle weighing 10,000 pounds gross vehicle weight or less; a church bus, farm bus, volunteer transportation vehicle, or activity bus operated for a nonprofit organization when the activity bus is operated for a nonprofit purpose; and a fire-fighting vehicle or combination of vehicles (regardless of gross vehicle weight) when operated by any volunteer member of a municipal or rural fire department in the performance of his duty. A Class "C" license does not entitle the licensee to drive a motorcycle. A Class "C" license does not entitle the licensee to drive a vehicle designed to carry more than 12 passengers unless this subsection or G.S. 20-218(a) specifically entitles him to do so.

Any unusual vehicle shall be assigned by the Commissioner to the most appropriate class with suitable special restrictions if they appear to be necessary.

Any person who takes up residence in this State on a permanent basis is exempt from the provisions of this subsection for 30 days from the date that residence is established, if he is properly licensed in the jurisdiction of which he is a former resident.

(a1) No operator's or chauffeur's license issued on or after October 1, 1979, shall authorize the licensee to operate a motorcycle unless the license has been appropriately endorsed by the Division to indicate that the licensee has passed special road and written (or oral) tests demonstrating competence to operate a motorcycle. Any person licensed prior to January 1, 1978, who has operated a motorcycle for at least two years prior to that date, will be exempt from the provisions of this subsection upon filing with the Division of Motor Vehicles an affidavit attesting to said two years' experience. Nothing contained in this subsection shall be construed to require a moped operator to have a driver's license.

(b) Every application for a driver's license shall be made upon the approved form furnished by the Division.

(c) No person shall hereafter be issued a driver's license until it is determined that such person is physically and mentally capable of safely operating motor vehicles (of the type or class for which the person applied to be licensed) over the highways of the State. In determining whether or not a person is physically and mentally capable of safely operating motor vehicles over the highways of the State, the Division shall require such person to demonstrate his capability by passing an examination, which may include road tests, oral and in the case of literate applicants written tests, and tests of vision, as the Division may require. The Commissioner may adopt regulations that allow employees of governmental agencies or private businesses to receive a driver's license without taking a road test if the conditions specified in the regulations are complied with. Provided, however, that persons 60 years of age and over, when being examined as herein provided, shall not be required to parallel park a motor vehicle as part of any such examination.

(c1) In addition to the other requirements of this section, no person shall be issued a driver's license until such person has furnished proof that he is financially responsible. Proof of financial responsibility shall be in the form of a written certificate of any insurance carrier duly authorized to do business in this State certi-

fying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall state that the policy is in effect on the date of the issuance of the driver's license but shall not in and of itself constitute a binder or policy of insurance.

The preceding provisions of this subsection do not apply to applicants who do not own motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and who do not reside in a household wherein any other household member owns a motor vehicle. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the license application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 13C of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner.

Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(d) The Division shall cause each person who has heretofore been issued a driver's license to be examined or reexamined, as the case may be, to determine whether or not such person is physically and mentally capable of safely operating motor vehicles over the highways of the State. Those persons found, as a result of such examination or reexamination, to be capable of safely operating motor vehicles over the highways of the State shall be reissued drivers' licenses; and those persons found to be incapable of safely operating motor vehicles over the highways of the State shall not be reissued drivers' licenses. The examination required by this subsection may include such road tests, oral and in the case of literate applicants written tests, and tests of vision, as the Division may require and shall include such test as is necessary to assure that applicants recognize the "international symbol of access" for the handicapped (sign R7-8, Manual on Uniform Traffic Control Devices) and devices relative to handicapped drivers as set forth in Article 2A of this Chapter. Provided, however, that persons 60 years of age and over, when being examined as herein provided, shall not be required to parallel park a motor vehicle as part of any such examination.

(e) The Division is hereby authorized to grant unlimited licenses or licenses containing such limitations as it may deem advisable. Such limitation or limitations shall be noted on the face of the license, and it shall be unlawful for the holder of a license so limited to operate a motor vehicle without complying with the limitations, and the operation of a motor vehicle without complying with the limitations by a person holding a license with such limitations shall be the equivalent of operating a motor vehicle without a driver's license. If any applicant shall suffer from any physical defect or disease which affects his or her operation of a motor vehicle, the Division may require to be filed with it a certificate of such applicant's condition signed by some medical authority of the applicant's community designated by the Division. This certificate shall in all

cases be treated as confidential. Nothing in this subsection shall be construed to prevent the Division from refusing to issue a license, either limited or unlimited, to any person deemed to be incapable of operating a motor vehicle with safety to himself and to the public: Provided, that nothing herein shall prohibit deaf persons from operating motor vehicles who in every other way meet the requirements of this section.

(f) The drivers' licenses issued under this section shall automatically expire on the birthday of the licensee in the fourth year following the year of issuance; and no new license shall be issued to any operator after the expiration of his license until such operator has again passed the examination specified in this section. Any operator may at any time within 60 days prior to the expiration of his license apply for a new license and if the applicant meets the requirements of this Article, the Division shall issue a new license to him. A new license issued within 60 days prior to the expiration of an applicant's old license or within 12 months thereafter shall automatically expire four years from the date of the expiration of the applicant's old license.

Any person serving in the armed forces of the United States on active duty and holding a valid driver's license properly issued under this section and stationed outside the State of North Carolina may renew his license by making application to the Division by mail. Any other person, except a nonresident as defined in this Article, who holds a valid driver's license issued under this section and who is temporarily residing outside North Carolina, may also renew by making application to the Division by mail. For purposes of this section "temporarily" shall mean not less than 30 days continuous absence from North Carolina. In either case, the Division may waive the examination and color photograph ordinarily required for the renewal of a driver's license, and may impose in lieu thereof such conditions as it may deem appropriate to each particular application; provided that such license shall expire 30 days after licensee returns to North Carolina, and such license shall be designated as temporary.

Provided further, that no person who applies for the renewal of his driver's license shall be required to take a written examination or road test as a part of any such examination unless such person has been convicted of a traffic violation or had prayer for judgment continued with respect to any traffic violation within a four-year period immediately preceding the date of such person's renewal application or unless such person suffers from a mental or physical condition which impairs his ability to operate a motor vehicle.

Provided further, that no person who applies for the renewal of his driver's license and who must take the written examination pursuant to this section shall be issued a renewed license unless such person has furnished proof that he is financially responsible. Proof of financial responsibility shall be in the form of a written certificate of any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall state that the policy is in effect on the date of the renewal of the driver's license but shall not in and of itself constitute a binder or policy of insurance.

The provisions of the preceding paragraph do not apply to applicants who do not own motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and who do not reside in a household wherein any other household member owns a motor vehicle. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the license application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 13C of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner.

Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter.

(g) Repealed by Session Laws 1979, c. 667, s. 6, effective January 1, 1981.

(h) Repealed by Session Laws 1979, c. 113, s. 1.

(i) The fee for issuance or reissuance of a Class "C" license is ten dollars ($10.00). The fee for issuance or reissuance of a Class "B" or Class "A" license is fifteen dollars ($15.00). A person receiving at the same time a driver's license and an endorsement pursuant to G.S. 20-7(a1) shall be charged only the fee required for the class of driver's license he is receiving.

(i1) Any person whose driver's license or other privilege to operate a motor vehicle in this State has been suspended, canceled or revoked pursuant to the provisions of this Chapter shall pay a restoration fee of twenty-five dollars ($25.00) to the Division prior to the issuance to such person of a new driver's license or the restoration of such driver's license or privilege; such restoration fee shall be paid to the Division in addition to any and all fees which may be provided by law. This restoration fee shall not be required from any licensee whose license was suspended, canceled, revoked or voluntarily surrendered for medical or health reasons whether or not a medical evaluation was conducted pursuant to this Chapter.

(j) The fees collected under this section and G.S. 20-14 shall be placed in the Highway Fund.

(k) Any person operating a motor vehicle in violation of this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided in this section.

(l) Any person who except for lack of instruction in operating a motor vehicle would be qualified to obtain an operator's license under this Article may apply for a temporary learner's permit, and the Division shall issue such permit, entitling the applicant, while having such permit in his immediate possession, to drive a specified type or class of motor vehicle upon the highways for a period of 18 months. The fee for issuance of a temporary learner's permit shall be five dollars ($5.00). Any such learner's permit may be renewed, or a second learner's permit may be issued, for an additional period of 18 months. The permittee must, while operating a motor vehicle over the highways, be accompanied by a person who is licensed to operate the class or type of vehicle being operated and who is seated in the seat beside the permittee.

The fee for the issuance of a renewal or a second temporary learner's permit shall be five dollars ($5.00).

(l-1) The Division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to an applicant who is enrolled in a driver training program as provided for in G.S. 20-88.1 even though the applicant has not yet reached the legal age to be eligible for a driver's license. Such instruction permit shall entitle the permittee when he has such permit in his immediate possession to operate a specified type or class of motor vehicle subject to the restrictions imposed by the Division. The restrictions which the Division may impose on such permits include but are not limited to restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee.

(m) The Division upon receiving proper application may in its discretion issue a restricted instruction permit effective for a school year or a lesser period to an applicant who is enrolled in a driver-training program approved by the State Superintendent of Public Instruction even though the applicant has not yet reached the legal age to be eligible for a driver's license. Such instruction permit shall entitle the permittee when he has such permit in his immediate possession to operate a specified type or class of motor vehicle subject to the restrictions imposed by the Division. The restrictions which the Division may impose on such permits include but are not limited to restrictions to designated areas and highways and restrictions prohibiting operation except when an approved instructor is occupying a seat beside the permittee.

(n) Every driver's license issued by the Division shall bear thereon the distinguishing number assigned to the licensee and color photograph of the licensee of a size approved by the Commissioner and shall contain the name, age, residence address and a brief description of the licensee, who, for the purpose of identification and as a condition precedent to the validity of the license, immediately upon receipt thereof, shall endorse his or her regular signature in ink upon the same in the space provided for that purpose unless a facsimile of his or her signature appears thereon; provided the requirement that a color photograph of the licensee appear on the license may be waived by the Commissioner upon satisfactory proof that the taking of such photograph violates the religious convictions of the licensee. Drivers' licenses shall be issued with differing color photographic backgrounds according to the licensee's age at time of issuance for the following age groups:

(1) Persons who have not attained the age of 21 years.

(2) Persons who have attained the age of 21 years.

The Division of Motor Vehicles shall determine the different colors to be used. Such license shall be carried by the licensee at all times while engaged in the operation of a motor vehicle. However, no person charged with failing to carry a license shall be convicted if he produces in court a driver's license issued to him which was valid at the time of his arrest for the type or class of vehicle he was operating at the time of his arrest.

(o) Any person convicted of violating any provision of this section shall be guilty of a misdemeanor and punished in the discretion of the court: Provided, that no person shall be convicted of operating a motor vehicle without a driver's license if he produces in court at

the time of his trial upon such charge an expired driver's license and a renewed driver's license issued to him within 30 days of the expiration date of the expired license and which would have been a defense to the charge had it been issued prior to the time of the alleged offense. (1935, c. 52, s. 2; 1943, c. 649, s. 1; c. 787, s. 1; 1947, c. 1067, s. 10; 1949, c. 583, ss. 9, 10; c. 826, ss. 1, 2; 1951, c. 542, ss. 1, 2; c. 1196, ss. 1-3; 1953, cc. 839, 1284, 1311; 1955, c. 1187, ss. 2-6; 1957, c. 1225; 1963, cc. 754, 1007, 1022; 1965, c. 410, s. 5; 1967, c. 509; 1969, c. 183; c. 783, s. 1; c. 865; 1971, c. 158; 1973, cc. 73, 705; c. 1057, s. 1; 1975, c. 162, s. 1; c. 295; c. 296, ss. 1, 2; c. 684; c. 716, s. 5; c. 841; c. 875, s. 4; c. 879, s. 46; 1977, c. 340, s. 3; c. 865, ss. 1, 3; 1979, c. 37, s. 1; c. 113; c. 178, s. 2; c. 667, ss. 3-11, 41; c. 678, ss. 1-3; c. 801, ss. 5, 6; 1981, c. 42; c. 690, ss. 8-10; c. 792, s. 3; 1981 (Reg. Sess., 1982), c. 1257, s. 1; 1983, c. 443, s. 1; 1985, c. 141, s. 4; c. 682, ss. 1, 2; 1987, c. 869, ss. 10, 11.)

Editor's Note. —

Session Laws 1985, c. 141, s. 6, provides that the amendment thereby shall become effective September 1, 1986. Section 6 further provides that if the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to National Uniform Drinking Age of 21 as found in Section 6 of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, then ss. 1, 2, 2.1, 4 and 5 of the act shall expire upon the certification of the Secretary of State that the federal mandate has been repealed or has been invalidated, and the statutes amended by ss. 1, 2, 2.1, 4 and 5 shall revert to the form they would have without the amendments made by these sections.

Session Laws 1987, c. 869, s. 19 is a severability clause.

Effect of Amendments. —

Session Laws 1985, c. 141, s. 4, effective Sept. 1, 1986, substituted present subdivisions (n)(1) and (n)(2) for former subdivisions (n)(1), (n)(2), and (n)(3), which read: "(1) Persons who have not attained the age of 19 years; (2) Persons who have attained the age of 19 years but have not attained the age of 21 years; and (3) Persons who have attained the age of 21 years."

Session Laws 1985, c. 682, ss. 1, 2, effective July 10, 1985, substituted "the issuance to such person" for "the issuance of such person" in the first sentence of subsection (i1) and in the last sentence of subsection (i1) substituted "revoked or voluntarily surrendered" for "or revoked" and substituted "whether or not a medical evaluation was conducted" for "following a medical evaluation."

The 1987 amendment, effective January 1, 1988, inserted subsection (c1) and added the last five paragraphs in subsection (f).

§ 20-7.2: Repealed by Session Laws 1987, c. 581, s. 2, effective July 9, 1987.

Editor's Note. — Session Laws 1987, c. 581, s. 6 provides that s. 2 of the act, which repealed this section, is effective upon ratification and shall apply only to offenses committed on or after that date. The act was ratified July 9, 1987.

§ 20-9. What persons shall not be licensed.

CASE NOTES

Statutes Governing Driving Privileges Civil in Nature. — Administration of statutes governing the issuance, revocation, suspension and cancellation of driving privileges is civil, rather than penal, in nature. Smith v. Wilkins, 75 N.C. App. 483, 331 S.E.2d 159 (1985).

Purpose of Subsection (f). — Subsection (f) is clearly designed to promote public safety on the highways and to

protect motorists on North Carolina's highways from the hazards created by a person who has demonstrated disregard for the rules of safety while operating a motor vehicle. The enactment of laws to assure public safety on the state's highways is a valid exercise of the police power by the legislature. Smith v. Wilkins, 75 N.C. App. 483, 331 S.E.2d 159 (1985).

Subsection (f) imposes no durational residency requirement to obtain a North Carolina driver's license, but requires only that the individual's license not be in a revoked status in another jurisdiction, and, consequently, does not violate the right to travel under the federal constitution. Smith v. Wilkins, 75 N.C. App. 483, 331 S.E.2d 159 (1985).

Persons Whose Licenses Are Revoked Elsewhere and Then Move to State. — All people who, as the result of traffic convictions, have their licenses revoked in other jurisdictions and then move to North Carolina are treated similarly under subsection (f), which is all that is required by the equal protection clause of the Fourteenth Amendment. Smith v. Wilkins, 75 N.C. App. 483, 331 S.E.2d 159 (1985).

§ 20-13. Suspension of license of provisional licensee.

(a) The Division may suspend, with or without a preliminary hearing, the operator's license of a provisional licensee upon receipt of notice of the licensee's conviction of a motor vehicle moving violation, in accordance with subsection (b), if the offense was committed while the person was still a provisional licensee. As used in this section, the phrase "motor vehicle moving violation" does not include the offenses listed in the third paragraph of G.S. 20-16(c) for which no points are assessed, nor does it include equipment violations specified in Part 9 of Article 3 of this Chapter. However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing.

(e) Repealed by Session Laws 1987, c. 869, s. 14, effective January 1, 1988.

(1963, c. 968, s. 1; 1965, c. 897; 1967, c. 295, s. 1; 1971, c. 120, ss. 1, 2; 1973, c. 439; 1975, c. 716, s. 5; 1979, c. 555, s. 1; 1983, c. 538, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1101, s. 3; 1987, c. 744, ss. 3, 4; c. 869, s. 14.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1987, c. 869, s. 19 is a severability clause.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective October 1, 1984, deleted the former second sentence of subsection (a), which read "A provisional licensee is a licensee who is under 18 years of age."

Session Laws 1987, c. 744, ss. 3, 4, effective August 7, 1987, substituted "with or without a preliminary hearing" for "after providing an opportunity for a preliminary hearing" in the first sentence of subsection (a), and added the last sentence of that subsection.

Session Laws 1987, c. 869, s. 14, effective January 1, 1988, repealed subsection (e).

§ 20-13.2. Grounds for revoking provisional license.

(e) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in the form of a written certificate of any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall state that the policy is in effect on the date of the restoration of the driver's license but shall not in and of itself constitute a binder or policy of insurance.

The preceding provisions of this subsection do not apply to applicants who do not own motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and who do not reside in a household wherein any other household member owns a motor vehicle. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the license application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 13C of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1983, c. 435, s. 33; 1987, c. 869, s. 12.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, added subsection (e).

§ 20-16. Authority of Division to suspend license.

(a) The Division shall have authority to suspend the license of any operator with or without a preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee:

(1) to (4) Repealed by Session Laws 1979, c. 36;

(5) Has, under the provisions of subsection (c) of this section, within a three-year period, accumulated 12 or more points, or eight or more points in the three-year period immediately following the reinstatement of a license which has been suspended or revoked because of a conviction for one or more traffic offenses;

(6) Has made or permitted an unlawful or fraudulent use of such license or a learner's permit, or has displayed or represented as his own, a license or learner's permit not issued to him;

(7) Has committed an offense in another state, which if committed in this State would be grounds for suspension or revocation;

(8) Has been convicted of illegal transportation of alcoholic beverages;

(8a) Has been convicted of impaired instruction under G.S. 20-12.1;

(8b) Has violated on a military installation a regulation of that installation prohibiting conduct substantially equivalent to conduct that constitutes impaired driving under G.S. 20-138.1 and, as a result of that violation, has had his privilege to drive on that installation revoked or suspended after an administrative hearing authorized by the commanding officer of the installation and that commanding officer has general court martial jurisdiction;

(9) Has, within a period of 12 months, been convicted of two or more charges of speeding in excess of 55 and not more than 80 miles per hour, or of one or more charges of reckless driving and one or more charges of speeding in excess of 55 and not more than 80 miles per hour;

(10) Has been convicted of operating a motor vehicle at a speed in excess of 75 miles per hour on a public road or highway where the maximum speed is less than 70 miles per hour;

(10a) Has been convicted of operating a motor vehicle at a speed in excess of 80 miles per hour on a public highway where the maximum speed is 70 miles per hour; or

(11) Has been sentenced by a court of record and all or a part of the sentence has been suspended and a condition of suspension of the sentence is that the operator not operate a motor vehicle for a period of time.

However, if the Division revokes without a preliminary hearing and the person whose license is being revoked requests a hearing before the effective date of the revocation, the licensee retains his license unless it is revoked under some other provision of the law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing.

(1935, c. 52, s. 11; 1947, c. 893, ss. 1, 2; c. 1067, s. 13; 1949, c. 373, ss. 1, 2; c. 1032, s. 2; 1953, c. 450; 1955, c. 1152, s. 15; c. 1187, ss. 9-12; 1957, c. 499, s. 1; 1959, c. 1242, ss. 1-2; 1961, c. 460, ss. 1, 2(a); 1963, c. 1115; 1965, c. 130; 1967, c. 16; 1971, c. 234, ss. 1, 2; c. 793, ss. 1, 2; c. 1198, ss. 1, 2; 1973, c. 17, ss. 1, 2; 1975, c. 716, s. 5; 1977, c. 902, s. 1; 1979, c. 36; c. 667, ss. 18, 41; 1981, c. 412, s. 4; c. 747, ss. 33, 66; 1981 (Reg. Sess., 1982), c. 1256; 1983, c. 435, s. 10; c. 538, ss. 3-5; c. 798; 1983 (Reg. Sess., 1984), c. 1101, s. 4; 1987, c. 744, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, deleted "or has been convicted under G.S. 18B-302(e) or (f) of fraudulent use of a driver's license to obtain alcoholic beverages" at the end of subdivision (a)(8).

The 1987 amendment, effective August 7, 1987, substituted "with or without a preliminary hearing" for "after providing an opportunity for prelimi-

nary hearing" in the introductory language of subsection (a), and added the final sentence of subsection (a).

CASE NOTES

I. IN GENERAL.

Applied in Belk v. Peters, 63 N.C. App. 196, 303 S.E.2d 641 (1983).

Stated in State v. MaGee, 75 N.C. App. 357, 330 S.E.2d 825 (1985).

OPINIONS OF ATTORNEY GENERAL

Conviction by Bond Forfeiture. — The Division of Motor Vehicles is not prohibited from taking action against a North Carolina licensee upon receipt of a "conviction" by bond forfeiture from South Carolina. See opinion of Attorney General to Mr. William S. Hiatt, Commissioner of Motor Vehicles, — N.C.A.G. — (Apr. 7, 1987).

§ 20-16.1. Mandatory suspension of driver's license upon conviction of excessive speeding; limited driving permits for first offenders.

(f) Repealed by Session Laws 1987, c. 869, s. 14, effective January 1, 1988.

(g) Any judge granting limited driving privileges under this section shall, prior to granting such privileges, be furnished proof and be satisfied that the person being granted such privileges is financially responsible. Proof of financial responsibility shall be in the form of a written certificate of any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall state that the policy is in effect on the date such privileges are granted but shall not in and of itself constitute a binder or policy of insurance.

The preceding provisions of this subsection do not apply to applicants who do not own motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and who do not reside in a household wherein any other household member owns a motor vehicle. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 13C of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. Such granting of limited driving privileges shall be conditioned upon the maintenance of such financial responsibility during the period of the limited driving privilege. Nothing in this subsection precludes any person from showing proof of financial responsibility in any

other manner authorized by Articles 9A and 13 of this Chapter. (1953, c. 1223; 1955, c. 1187, s. 15; 1959, c. 1264, s. 4; 1965, c. 133; 1975, c. 716, s. 5; c. 763; 1979, c. 667, ss. 19, 41; 1983, c. 77; 1987, c. 869, ss. 13, 14.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1987, c. 869, s. 19, is a severability clause.

Effect of Amendments. — The 1987 amendment, effective January 1, 1988, repealed subsection (f) and added subsection (g).

§ 20-16.2. Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. — Upon receipt of a properly executed affidavit required by subsection (c), the Division must expeditiously notify the person charged that his license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, he retains his license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws his request, or he fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents he deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if he makes the request in writing at least three days before the hearing. The person may subpoena any other witness he deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

(1) The person was charged with an implied-consent offense;
(2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense;
(3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;
(4) The person was notified of his rights as required by subsection (a); and
(5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division

finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that conditions (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his license immediately upon notification by the Division.

(e1) Limited Driving Privilege after Six Months in Certain Instances. — A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

(1) At the time of the refusal he held either a valid driver's license or a license that had been expired for less than one year;

(2) At the time of the refusal, he had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) At the time of the refusal, he had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;

(4) The implied-consent offense charged did not involve death or critical injury to another person;

(5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:

a. Other than by conviction; or

b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and he has complied with at least one of the mandatory conditions of probation listed for the punishment level under which he was sentenced;

(6) Subsequent to the refusal he has had no unresolved pending charges for or additional convictions of an offense involving impaired driving; and

(7) His license has been revoked for at least six months for the refusal.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing must be conducted in the district in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing must be conducted in the district in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if his license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(i) Right to Chemical Analysis before Arrest or Charge. — A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer must afford the person the opportunity to

have a chemical analysis of his breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person must confirm his request in writing and he must be notified:

(1) That the test results will be admissible in evidence and may be used against him in any implied-consent offense that may arise;

(2) That his license will be revoked for at least 10 days if the test reveals an alcohol concentration of 0.10 or more; and

(3) That if he fails to comply fully with the test procedures, the officer may charge him with any offense for which the officer has probable cause, and if he is charged with an implied-consent offense, his refusal to submit to the testing required as a result of that charge would result in revocation of his driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant. (1963, c. 966, s. 1; 1965, c. 1165; 1969, c. 1074, s. 1; 1971, c. 619, ss. 3-6; 1973, c. 206, ss. 1, 2; cc. 824, 914; 1975, c. 716, s. 5; 1977, c. 812; 1979, c. 423, s. 2; 1979, 2nd Sess., c. 1160; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 87; c. 435, s. 11; 1983 (Reg. Sess., 1984), c. 1101, ss. 5-8; 1987, c. 797, s. 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1101, s. 38, makes ss. 3, 8, 13, 16, 22, 23, 34, 35 and 36 of the act effective October 1, 1984, and the remaining sections, except as provided in s. 37, effective upon ratification. Section 37 sets out special provisions with regard to s. 32, which amends § 20-179.3. The act was ratified July 6, 1984.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment by c. 1101, ss. 5-7, effective July 6, 1984, inserted the present third sentence of subsection (d), inserted the present sixth sentence of subsection (d), substituted "and must be limited" for "under the provisions for hearings held under G.S. 20-16(d), except that the hearing is limited" in the present seventh sentence of subsection (d), substituted the present ninth and tenth sentences for a former seventh sentence, which read "If the Division finds that any of the conditions is not met, it must rescind the revocation," rewrote subdivision (e1)(1), which read "At the time of the refusal, the applicant held a valid driver's license," and substituted "seven years" for "10 years" in subdivision (e1)(2) and (e1)(3).

The 1983 (Reg. Sess., 1984) amendment by c. 1101, s. 8, effective October 1, 1984, rewrote the second sentence of subsection (i), which read "Upon this request, the officer must afford the person the opportunity to have a chemical analysis, if available, upon the procedures applicable had the person been charged," and substituted the present fourth sentence of subsection (i) with its subdivision (1) through (3) for a former fourth sentence, which read "Before the chemical analysis is made, the person must sign a form, to be supplied by the Division, confirming his request."

The 1987 amendment, effective August 12, 1987, inserted the present second sentence of subsection (d).

Legal Periodicals. —

For note discussing North Carolina's Validation of the Warrantless Seizure of Blood from an Unconscious Suspect, in Light of State v. Hollingsworth, 77 N.C. App. 36, 334 S.E.2d 463 (1985), see 21 Wake Forest L. Rev. 1071 (1986).

CASE NOTES

I. IN GENERAL.

Unconscious Driver. — Requiring the arrest of an unconscious driver would serve no sensible purpose; in such a case, the formal requirements of subsection (a) of this section are not meant to apply. State v. Hollingsworth, 77 N.C. App. 36, 334 S.E.2d 463 (1985).

In a prosecution for involuntary manslaughter and driving under the influence, the performance of a blood alcohol test on blood seized from an unconscious defendant pursuant to subsection (b) of this section did not violate the defendant's rights under the Fourth Amendment of the U.S. Constitution and N.C. Const., Art. 1, § 20, relating to search and seizure, because of (1) the existence of probable cause to arrest; (2) the limited nature of the intrusion upon the person; and (3) the destructibility of the evidence. State v. Hollingsworth, 77 N.C. App. 36, 334 S.E.2d 463 (1985).

Applied in Byrd v. Wilkins, 69 N.C. App. 516, 317 S.E.2d 108 (1984); State ex rel. Edmisten v. Tucker, 312 N.C. 326, 323 S.E.2d 294 (1984).

Cited in State v. Harper, 82 N.C. App. 398, 346 S.E.2d 223 (1986); State v. Knoll, — N.C. App. —, 352 S.E.2d 463 (1987).

II. ADMINISTRATION OF TEST.

Accused Need Not Be Warned That, etc.—

As breathalyzer results are not testimonial evidence, Miranda warnings are not required prior to administering a breathalyzer. State v. White, 84 N.C. App. 111, 351 S.E.2d 828, cert. denied, — N.C. —, 353 S.E.2d 404 (1987).

Time Limit on Right, etc. —

The fact that as a matter of grace the legislature has given defendant the right to refuse to submit to chemical analysis, and suffer the consequences for refusing, does not convert this step in the investigation into a critical stage in the prosecution entitling defendant to more than the 30 minutes provided in the statute to secure a lawyer. Otherwise, defendant would be able to delay the analysis until its results would be of doubtful value. State v. Howren, 312 N.C. 454, 323 S.E.2d 335 (1984).

The 30-minute period from the advising of rights is a matter of legislative grace. In re Vallender, 81 N.C. App. 291, 344 S.E.2d 62 (1986).

III. REVOCATION OF LICENSE FOR REFUSAL TO TAKE.

This section does not require that a suspected drunk driver submit to a chemical test. It does, however, provide that a suspect who "willfully refuses" a request to submit to the test will have his driving privileges automatically revoked for a period of six months. The standard of "willful refusal" in this context is clear. Once apprised of one's rights and having received a request to submit, a driver is allowed 30 minutes in which to make a decision. A "willful refusal" occurs whenever a driver (1) is aware that he has a choice to take or to refuse to take the test; (2) is aware of the time limit within which he must take the test; (3) voluntarily elects not to take the test; and (4) knowingly permits the prescribed 30-minute time limit to expire before he elects to take the test. Mathis v. North Carolina DMV, 71 N.C. App. 413, 322 S.E.2d 436 (1984).

One may refuse the test under this section by inaction as well as by words. Refusal, in this context, is the declination of a request or demand, or the omission to comply with some requirement of law, as the result of a positive intention to disobey. A finding that a driver did refuse to take the test is equivalent to a finding that the driver willfully refused to take the test. Mathis v. North Carolina DMV, 71 N.C. App. 413, 322 S.E.2d 436 (1984).

Delay After Being Informed, etc. —

Where plaintiff was requested to take the test pursuant to this section and acknowledged an understanding of his rights, and where plaintiff was told of the 30-minute time limit and was repeatedly asked if he would take the test before it expired, plaintiff's initial 20-minute silence in response to those requests does not toll the 30-minute period. Otherwise, any suspect could evade the possible repercussions of testing by simply refusing to cooperate. Mathis v. North Carolina DMV, 71 N.C. App. 413, 322 S.E.2d 436 (1984).

The trial court did not err in finding that petitioner willfully refused to submit to a breath test by concluding that the 30-minute waiting period began to run at 1:39 a.m., when he was advised of his rights, instead of 1:54 a.m., when the formal request was made. In re

Vallender, 81 N.C. App. 291, 344 S.E.2d 62 (1986).

Refusal to Provide More Than Two Samples. — Where petitioner provided two breath samples resulting in readings of .28 and .31 and then refused to provide any more samples, her conduct amounted to a willful refusal under subsection (c) of this section within the meaning of § 20-139.1(b3). Watson v. Hiatt, 78 N.C. App. 609, 337 S.E.2d 871 (1985).

IV. EVIDENCE IN PROSECUTION FOR DRUNKEN DRIVING.

Chemical analyses of blood or breath are not within the protection of the Fifth and Fourteenth Amendments to the U.S. Constitution, or N.C. Const., Art. I, § 23, as such chemical analyses are not evidence which is "testimonial" or "communicative" in nature. State v. White, 84 N.C. App. 111, 351 S.E.2d 828, cert. denied, — N.C. —, 353 S.E.2d 404 (1987).

Failure to Advise Defendant of Right to Additional Test. —

Where the defendant is not advised of his rights under subsection (a), including, under subsection (a)(5), the right to have another alcohol concentration test performed by a qualified person of his own choosing, the State's test is inadmissible in evidence. State v. Gilbert, — N.C. App. —, 355 S.E.2d 261 (1987).

Defendant's Incriminating Statements Deemed Harmless Error. — Admission of evidence that after defendant blew into breathalyzer and was shown the reading, he made statements indicating his disbelief at the result, thus allegedly creating an inference that he had registered a reading in excess of the legal limit on the first test, was harmless in light of other evidence of defendant's guilt, including his refusal to take a second test. State v. Wike, — N.C. App. —, 355 S.E.2d 221 (1987).

§ 20-16.3A. Impaired driving checks.

Legal Periodicals. — For comment, "DWI Roadblocks: Are They Constitutional in North Carolina?," see 21 Wake Forest L. Rev. 779 (1986).

§ 20-16.4. Revocation for failure to complete Alcohol and Drug Education Traffic School.

(b) Right of Notification and Hearing. — Upon receipt of a properly executed notice of failure from the school, the Division must expeditiously notify the person that his license is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. If the person properly requests a hearing, he retains his license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or he fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents he deems necessary. The person may request the hearing officer to subpoena the appropriate school personnel to appear in person at the hearing if he makes the request in writing at least three days before the hearing. The person may subpoena any other witness he deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section.

(c) Hearing Procedures; Issues. — The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the school is located, and must be limited to consideration of whether:

(1) The person was validly assigned to the school by a court;

(2) The person failed to complete the course of instruction successfully; and

(3) The failure was willful.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender his license immediately upon notification by the Division. The person may file a petition in superior court for a de novo review of the issues listed in this section, in the same manner and under the same conditions as provided in G.S. 20-25, except that the hearing must be held in the judicial district in which the school is located.

(1983, c. 435, s. 13; 1983 (Reg. Sess., 1984), c. 1101, ss. 9, 10.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, inserted the present third sentence of subsection (b), inserted the present first sentence of subsection (c), and in the present second sentence of subsection (c) substituted "and must be" for "under the provisions for hearings held under G.S. 20-16(d), except that the hearing is."

§ 20-16.5. Immediate civil license revocation for certain persons charged with implied-consent offenses.

(a) Definitions. — As used in this section the following words and phrases have the following meanings:

(1) Charging Officer. — As described in G.S. 20-16.2(a1).

(2) Clerk. — As defined in G.S. 15A-101(2).

(3) Judicial Official. — As defined in G.S. 15A-101(5).

(4) Revocation Report. — A sworn statement by a charging officer and a chemical analyst containing facts indicating that the conditions of subsection (b) have been met. When one chemical analyst analyzes a person's blood and another chemical analyst informs a person of his rights and responsibilities under G.S. 20-16.2, the report must include the statements of both analysts.

(5) Surrender of a Driver's License. — The act of turning over to a court or a law enforcement officer the person's most recent, valid driver's license or learner's permit issued by the Division or by a similar agency in another jurisdiction, or a limited driving privilege issued by a North Carolina court. A person who is validly licensed but who is unable to locate his license card may file an affidavit with the clerk setting out facts that indicate that he is unable to locate his license card and that he is validly licensed; the filing of the affidavit constitutes a surrender of the person's license.

(b) Revocations for Persons Who Refuse Chemical Analyses or Have Alcohol Concentrations of 0.10 or More. — A person's driver's license is subject to revocation under this section if:

(1) A charging officer has reasonable grounds to believe that the person has committed an offense subject to the implied-consent provisions of G.S. 20-16.2;

(2) The person is charged with that offense as provided in G.S. 20-16.2(a);

(3) The charging officer and the chemical analyst comply with the procedures of G.S. 20-16.2 and G.S. 20-139.1 in requir-

ing the person's submission to or procuring a chemical analysis; and

(4) The person:

a. Willfully refuses to submit to the chemical analysis; or

b. Has an alcohol concentration of 0.10 or more within a relevant time after the driving.

(b1) Precharge Test Results as Basis for Revocation. — Notwithstanding the provisions of subsection (b), a person's driver's license is subject to revocation under this section if:

(1) He requests a precharge chemical analysis pursuant to G.S. 20-16.2(i); and

(2) He has, at any relevant time after the driving, an alcohol concentration of 0.10 or more; and

(3) He is charged with an implied-consent offense.

(c) Duty of Charging Officers and Chemical Analysts to Report to Judicial Officials. — If a person's driver's license is subject to revocation under this section, the charging officer and the chemical analyst must execute a revocation report. If the person has refused to submit to a chemical analysis, a copy of the affidavit to be submitted to the Division under G.S. 20-16.2(c) may be substituted for the revocation report if it contains the information required by this section. It is the specific duty of the charging officer to make sure that the report is expeditiously filed with a judicial official as required by this section.

(e) Procedure if Report Filed with Judicial Official When Person Is Present. — If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official must, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he must enter an order revoking the person's driver's license for the period required in this subsection. The judicial official must order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official must give the person a copy of the revocation order. In addition to setting it out in the order the judicial official must personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. Unless the person is not currently licensed, the revocation under this subsection begins at the time the revocation order is issued and continues until the person's license has been surrendered for 10 days and the person has paid the applicable costs. If the person is not currently licensed, the revocation continues until 10 days from the date the revocation order is issued and the person has paid the applicable costs. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-up order must be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order must be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division.

(f) Procedure if Report Filed with Clerk of Court When Person Not Present. — When a clerk receives a properly executed report under subdivision (d)(3) and the person named in the revocation report is not present before the clerk, the clerk must determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he must mail to the person a revocation order by first-class mail. The order must direct that the person on or before the effective date of the order either surrender his license to the clerk or appear before the clerk and demonstrate that he is not currently licensed, and the order must inform the person of the time and effective date of the revocation and of its duration, of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. Revocation orders mailed under this subsection become effective on the fourth day after the order is deposited in the United States mail. If within five working days of the effective date of the order, the person does not surrender his license to the clerk or appear before the clerk to demonstrate that he is not currently licensed, the clerk must immediately issue a pick-up order. The pick-up order must be issued and served in the same manner as specified in subsection (e) for pick-up orders issued pursuant to that subsection. A revocation under this subsection begins at the date specified in the order and continues until the person's license has been revoked for the period specified in this subsection and the person has paid the applicable costs. The period of revocation under this subsection is:

(1) Ten days from the time the person surrenders his license to the court, if the surrender occurs within five working days of the effective date of the order; or

(2) Ten days after the person appears before the clerk and demonstrates that he is not currently licensed to drive, if the appearance occurs within five working days of the effective date of the revocation order; or

(3) Thirty days from the time:

a. The person's driver's license is picked up by a law-enforcement officer following service of a pick-up order; or

b. The person demonstrates to a law-enforcement officer who has a pick-up order for his license that he is not currently licensed; or

c. The person's driver's license is surrendered to the court if the surrender occurs more than five working days after the effective date of the revocation order; or

d. The person appears before the clerk to demonstrate that he is not currently licensed, if he appears more than five working days after the effective date of the revocation order.

When a pick-up order is issued, it must inform the person of his right to a hearing as specified in subsection (g), and that the revocation remains in effect pending the hearing. An officer serving a pick-up order under this subsection must return the order to the court indicating the date it was served or that he was unable to serve the order. If the license was surrendered, the officer serving the order must deposit it with the clerk within three days of the surrender.

(g) Hearing before Magistrate or Judge if Person Contests Validity of Revocation. — A person whose license is revoked under this section may request in writing a hearing to contest the validity of the revocation. The request may be made at the time of the person's initial appearance, or within 10 days of the effective date of the revocation to the clerk or a magistrate designated by the clerk, and may specifically request that the hearing be conducted by a district court judge. The Administrative Office of the Courts must develop a hearing request form for any person requesting a hearing. Unless a district court judge is requested, the hearing must be conducted within the county by a magistrate assigned by the chief district judge to conduct such hearings. If the person requests that a district court judge hold the hearing, the hearing must be conducted within the judicial district by a district court judge assigned to conduct such hearings. The revocation remains in effect pending the hearing, but the hearing must be held within three working days following the request if the hearing is before a magistrate or within five working days if the hearing is before a district court judge. The request for the hearing must specify the grounds upon which the validity of the revocation is challenged and the hearing must be limited to the grounds specified in the request. A witness may submit his evidence by affidavit unless he is subpoenaed to appear. Any person who appears and testifies is subject to questioning by the judicial official conducting the hearing, and the judicial official may adjourn the hearing to seek additional evidence if he is not satisfied with the accuracy or completeness of evidence. The person contesting the validity of the revocation may, but is not required to, testify in his own behalf. Unless contested by the person requesting the hearing, the judicial official may accept as true any matter stated in the revocation report. If any relevant condition under subsection (b) is contested, the judicial official must find by the greater weight of the evidence that the condition was met in order to sustain the revocation. At the conclusion of the hearing the judicial official must enter an order sustaining or rescinding the revocation. The judicial official's findings are without prejudice to the person contesting the revocation and to any other potential party as to any other proceedings, civil or criminal, that may involve facts bearing upon the conditions in subsection (b) considered by the judicial official. The decision of the judicial official is final and may not be appealed in the General Court of Justice. If the hearing is not held and completed within three working days of the written request for a hearing before a magistrate or within five working days of the written request for a hearing before a district court judge, the judicial official must enter an order rescinding the revocation, unless the person contesting the revocation contributed to the delay in completing the hearing. If the person requesting the hearing fails to appear at the hearing or any rescheduling thereof after having been properly notified, he forfeits his right to a hearing.

(h) Return of License. — After the applicable period of revocation under this section, or if the magistrate or judge orders the revocation rescinded, the person whose license was revoked may apply to the clerk for return of his surrendered license. Unless the clerk finds that the person is not eligible to use the surrendered license, he must return it if:

(1) The applicable period of revocation has passed and the person has tendered payment for the costs under subsection (j); or

(2) The magistrate or judge has ordered the revocation rescinded.

If the license has expired, he may return it to the person with a caution that it is no longer valid. Otherwise, if the person is not eligible to use the license and the license was issued by the Division or in another state, the clerk must mail it to the Division. If the person has surrendered his copy of a limited driving privilege and he is no longer eligible to use it, the clerk must make a record that he has withheld the limited driving privilege and forward that record to the clerk in the county in which the limited driving privilege was issued for filing in the case file. If the person's license is revoked under this section and under another section of this Chapter, the clerk must surrender the license to the Division if the revocation under this section can terminate before the other revocation; in such cases, the costs required by subsection (j) must still be paid before the revocation under this section is terminated.

(1983, c. 435, s. 14; 1983 (Reg. Sess., 1984), c. 1101, ss. 11-17; 1985, c. 690, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1101, s. 38, makes ss. 3, 8, 13, 16, 22, 23, 34, 35 and 36 of the act effective October 1, 1984, and the remaining sections, except as provided in s. 37, effective upon ratification. Section 37 sets out special provisions with regard to s. 32, which amends § 20-179.3. The act was ratified July 6, 1984.

Session Laws 1983, c. 435, s. 45.1, as quoted in the main volume, was amended by Session Laws 1985, c. 698, s. 19(b), to read: "The funds collected pursuant to Section 14 of this act shall be paid into a Reserve Fund in the Judicial Department. The Judicial Department shall distribute these funds to the counties on a monthly basis to reimburse them for additional costs incurred in weekend confinement of persons convicted of driving while impaired. These funds shall be distributed to the 100 counties on the basis of the number of civil license revocations under the provisions of the Safe Roads Act in each county, as reported by the Judicial Department."

Session Laws 1985, c. 698, s. 19(a) provides: "The Director of the Budget shall transfer to the Judicial Department all funds that accumulated before June 30, 1985, in the Reserve for the Safe Roads Act established pursuant to Section 45.1 of Chapter 435 of the 1983 Session Laws. The Judicial Department shall distribute these funds as soon as practicable after the effective date of this section to the counties to reimburse them for additional costs incurred in weekend confinement of persons convicted of driving while impaired. These funds shall be distributed in a lump sum to each of the 100 counties on the basis of the number of civil license revocations under the provisions of the Safe Roads Act in each county, as reported by the Judicial Department."

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment by c. 1101, ss. 11, 12, 14, 15 and 17, effective July 6, 1984, added the last sentence of subdivision (a)(5), substituted "A charging officer" for "a law-enforcement officer" at the beginning of subdivision (b)(1), rewrote the second sentence of subsection (c), added the eighth and ninth sentences of subsection (e) and added the last sentence of subsection (h).

The 1983 (Reg. Sess., 1984) amendment by c. 1101, ss. 13 and 16, effective October 1, 1984, added subsection (b1) and in subsection (g) substituted "within 10 days of the effective date of the revocation" for "at any later time" in the second sentence, added "and the hearing must be limited to grounds specified in the request" at the end of the seventh sentence, and added the last sentence.

The 1985 amendment, effective August 1, 1985, and applicable to pick-up orders issued on and after that date, substituted the present last three sentences

of subsection (e) for the former last sentence of that subsection, which read "The pick-up order under this subsection may be issued by the clerk to any law-enforcement officer to pick up the person's driver's license in accordance with G.S. 20-29 as if the pick-up order had been issued by the Division," and rewrote the sixth sentence of subsection (f), which was identical to the sentence quoted above.

CASE NOTES

Constitutionality. — The summary 10-day revocation required by this section does not violate the equal protection rights guaranteed by the state and federal Constitutions. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

The Safe Roads Act's prehearing suspension provisions do not deprive persons whose licenses have been suspended for a 10 day period following their failure of a breath analysis test of property without due process of law. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

Because the summary 10 day license revocation under this section upon a person's failure to pass a breath analysis test is a remedial measure reasonably related to the State's interest in highway safety, the law of the land is satisfied by judicial review of the State's action to determine if there is probable cause to believe the conditions justifying revocation exist. The Safe Roads Act provides for such review, as under subsection (e) of this section, before revocation can take place, a detached and impartial judicial officer must scrutinize every condition of revocation to determine if each condition probably has been met. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

The summary 10 day revocation procedure of this section is not a punishment, but a highway safety measure. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

Duration of 10 Day Revocation. — Under subsection (e) of this section, the summary 10-day revocation continues until the person has paid the applicable costs and at least 10 days have elapsed from the date the revocation order is issued. Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986), rejecting the contention that revocation continues until 10 days from the date the revocation order is issued and the date the person has paid the applicable costs, whichever occurs last.

Standing to Challenge Section. — The mere fact that plaintiff suffered the adverse effects of this section in October, 1983, did not give him standing to challenge the statute in federal court after his license had been returned to him. Crow v. North Carolina, 642 F. Supp. 953 (W.D.N.C. 1986).

Applied in State ex rel. Edmisten v. Tucker, 312 N.C. 326, 323 S.E.2d 294 (1984); State v. Howren, 312 N.C. 454, 323 S.E.2d 335 (1984).

§ 20-17. Mandatory revocation of license by Division.

CASE NOTES

I. IN GENERAL.

Applied in State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894 (1985); State v. Curtis, 73 N.C. App. 248, 326 S.E.2d 90 (1985).

Stated in Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

§ 20-17.1. Revocation of license of mental incompetents, alcoholics and habitual users of narcotic drugs.

(e) Notwithstanding the provisions of G.S. 8-53, 8-53.2, and Article 3 of Chapter 122C of the General Statutes, the person or persons in charge of any institution as set out in subsection (a) hereinabove shall furnish such information as may be required for the effective enforcement of this section. Information furnished to the Division of Motor Vehicles as provided herein shall be confidential and the Commissioner of Motor Vehicles shall be subject to the same penalties and is granted the same protection as is the department, institution or individual furnishing such information. No criminal or civil action may be brought against any person or agency who shall provide or submit to the Commissioner of Motor Vehicles or his authorized agents the information as required herein.

(1947, c. 1006, s. 9; 1953, c. 1300, s. 36; 1955, c. 1187, s. 16; 1969, c. 186, s. 1; c. 1125; 1971, c. 208, ss. 1, 1½; c. 401, s. 1; c. 767; 1973, c. 475, s. 3½; c. 1362; 1975, c. 716, s. 5; 1983, c. 768, s. 3; 1987, c. 720, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective August 1, 1987, substituted "and Article 3 of Chapter 122C of the General Statutes" for "122-8.1 and 122-8.2" in subsection (e).

§ 20-19. Period of suspension or revocation.

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least

three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in the form of a written certificate of any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall state that the policy is in effect on the date of the restoration of the driver's license but shall not in and of itself constitute a binder or policy of insurance.

The preceding provisions of this subsection do not apply to applicants who do not own motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and who do not reside in a household wherein any other household member owns a motor vehicle. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the license application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 13C of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1935, c. 52, s. 13; 1947, c. 1067, s. 15; 1951, c. 1202, ss. 2-4; 1953, c. 1138; 1955, c. 1187, ss. 13, 17, 18; 1957, c. 499, s. 2; c. 515, s. 1; 1959, c. 1264, s. 11A; 1969, c. 242; 1971, c. 619, ss. 8-10; 1973, c. 1445, ss. 1-4; 1975, c. 716, s. 5; 1979, c. 903, ss. 4-6; 1981, c. 412, s. 4;

c. 747, ss. 34, 66; 1983, c. 435, s. 17; 1983 (Reg. Sess., 1984), c. 1101, s. 18; 1987, c. 869, s. 12.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1987, c. 869, s. 19 is a severability clause.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, substituted "another offense involving impaired driving for which he has been convicted, which offense occurred within three years" for "another conviction of an offense involving impaired driving, occurring within the three years" near the beginning of the first sentence of subsection (d), substituted "previous offenses involving impaired driving for which he has been convicted, and the most recent offense" for "previous conviction of an offense involving impaired driving, and the most recent conviction" near the beginning of the first sentence of subsection (e), and added subsection (j).

The 1987 amendment, effective January 1, 1988, added subsection (k).

CASE NOTES

Applied in State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894 (1985); State v. Curtis, 73 N.C. App. 248, 326 S.E.2d 90 (1985); Smith v. Wilkins, 75 N.C. App. 483, 331 S.E.2d 159 (1985).

§ 20-24. When court to forward license to Division and report convictions.

(a) Whenever any person is convicted of any offense for which this Article makes mandatory the revocation of the driver's license of such person by the Division, the court in which such conviction is had shall require the surrender to it of all drivers' licenses then held by the person so convicted and the court shall thereupon forward the same, together with a record of such conviction, to the Division within 30 days.

The clerks of court, assistant clerks of court and deputy clerks of court in which any person is convicted, and as a result thereof the revocation or suspension of the driver's license of such person is required under the provisions of this Chapter, are hereby designated as agents of the Division of Motor Vehicles for the purpose of receiving all drivers' licenses required to be surrendered under this section, and are hereby authorized to and shall give to such licensee a dated receipt for any such license surrendered, such receipt to be upon such form as may be approved by the Commissioner of Motor Vehicles. The original of such receipt shall be mailed forthwith to the Driver License Section of the Division of Motor Vehicles together with the driver's license. Any driver's license which has been surrendered and for which a receipt has been issued as herein required shall be revoked or suspended as the case may be as of the date shown upon the receipt issued to such person.

(b) Every court having jurisdiction over offenses committed under this Article, or any other law of this State regulating the operation of motor vehicles on highways, shall forward to the Division a record of the conviction of any person in said court for a violation of any [of] said laws, and may recommend the suspension of the driver's license of the person so convicted. Every court shall also forward to the Division a record of every conviction in which sentence is suspended on condition that the defendant not operate a

motor vehicle for a period of time, and such report shall state the period of time for which such condition is imposed; provided that the punishment for the violation of this subsection shall be the same as provided in G.S. 20-7(o).

(b1) In any case where the record of conviction for any reason has been received by the Division for more than one year after the date of the final conviction, the Division may, in its discretion, substitute a period of probation for all or any part of a suspension or revocation required because of the conviction.

(c) For the purpose of this Article the term "conviction" shall mean a final conviction of a criminal offense or a determination that a person is responsible for an infraction. Also for the purpose of this Article an order of forfeiture of cash in the full amount of a bond required by Article 26 of Chapter 15A of the General Statutes, which forfeiture has not been vacated, shall be equivalent to a conviction.

In addition to the foregoing provisions and for the purpose of this Article, a third or subsequent prayer for judgment continued within any five-year period shall be considered as a final conviction and to this end all orders entering prayer for judgments continued entered by the courts shall be reported to the Division of Motor Vehicles.

(d) After November 1, 1935, no driver's license shall be suspended or revoked except in accordance with the provisions of this Article.

(e) When a court sends a report of a conviction of homicide to the Division, it must indicate on that report whether the homicide conviction is one involving impaired driving. (1935, c. 52, s. 18; 1949, c. 373, ss. 3, 4; 1955, c. 1187, s. 14; 1959, c. 47; 1965, c. 38; 1973, c. 19; 1975, cc. 46, 445; c. 716, s. 5; c. 871, s. 1; 1979, c. 667, s. 41; 1981, c. 416; c. 839; 1983, c. 294, s. 5; c. 435, s. 19; 1985, c. 764, s. 18; 1987, c. 581, s. 1; c. 658, s. 2.)

Editor's Note. —

Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense.

Effect of Amendments. —

The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, added "of a criminal offense or a determination that a person is responsible for an infraction" at the end of the first sentence of subsection (c).

Session Laws 1987, c. 581, s. 1, effective July 9, 1987, and applicable only to offenses committed on or after that date, rewrote the first paragraph of subsection (c).

Session Laws 1987, c. 658, s. 2, effective October 1, 1987, substituted "homicide" for "manslaughter" in two places in subsection (e).

CASE NOTES

Applied in State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894 (1985).

§ 20-24.1. Revocation for failure to appear or pay fine, penalty or costs for motor vehicle offenses.

(a) The Division must revoke the driver's license of a person upon receipt of notice from a court that the person was charged with a motor vehicle offense and he:

(1) failed to appear, after being notified to do so, when the case was called for a trial or hearing; or

(2) failed to pay a fine, penalty, or court costs ordered by the court.

Revocation orders entered under the authority of this section are effective on the sixtieth day after the order is mailed or personally delivered to the person.

(b) A license revoked under this section remains revoked until the person whose license has been revoked:

(1) disposes of the charge in the trial division in which he failed to appear when the case was last called for trial or hearing; or

(2) demonstrates to the court that he is not the person charged with the offense; or

(3) pays the penalty, fine, or costs ordered by the court; or

(4) demonstrates to the court that his failure to pay the penalty, fine, or costs was not willful and that he is making a good faith effort to pay or that the penalty, fine, or costs should be remitted.

Upon receipt of notice from the court that the person has satisfied the conditions of this subsection applicable to his case, the Division must restore the person's license as provided in subsection (c). In addition, if the person whose license is revoked is not a resident of this State, the Division may notify the driver licensing agency in the person's state of residence that the person's license to drive in this State has been revoked.

(c) If the person satisfies the conditions of subsection (b) that are applicable to his case before the effective date of the revocation order, the revocation order must be rescinded and the person does not have to pay a restoration fee. For all other revocation orders issued pursuant to this section, the person must pay the restoration fee required by G.S. 20-7(i1) and satisfy any other applicable requirements of this Article before he may be relicensed.

(d) To facilitate the prompt return of licenses and to prevent unjustified charges of driving while license revoked, the clerk of court, upon request, must give the person a copy of the notice it sends to the Division to indicate that the person has complied with the conditions of subsection (b) applicable to his case. If the person complies with the condition before the effective date of the revocation, the notice must indicate that the person is eligible to drive if he is otherwise validly licensed.

(e) As used in this section and in G.S. 20-24.2, the word offense includes crimes and infractions created by this Chapter. (1985, c. 764, s. 19; 1985 (Reg. Sess., 1986), c. 852, ss. 4-6, 9; 1987, c. 581, s. 4.)

Editor's Note. — Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective September 1, 1986, rewrote the catchline to this section, which formerly read "Revocation for failure to appear or comply with sanctions in offenses", in subdivision (b)(2) substituted "offense" for "infraction", inserted "fine, or costs" in subdivision (b)(3) and in two places in subdivision (b)(4), substituted "G.S. 20-7(i1)" for "G.S. 20-7(o)" in the second sentence of subsection (c), and added subsection (e).

The 1987 amendment, effective October 1, 1987, and applicable only to offenses committed on or after that date, rewrote subdivision (b)(1), which read "appears to answer the charge; or."

§ 20-24.2. Court to report failure to appear or pay fine, penalty or costs.

(a) The court must report to the Division the name of any person charged with a motor vehicle offense under this Chapter who:

(1) Fails to appear to answer the charge as scheduled, unless within 20 days after the scheduled appearance, he either appears in court to answer the charge or disposes of the charge pursuant to G.S. 7A-146; or

(2) Fails to pay a fine, penalty, or costs within 20 days of the date specified in the court's judgment.

(b) The reporting requirement of this section and the revocation mandated by G.S. 20-24.1 do not apply to offenses in which an order of forfeiture of a cash bond is entered and reported to the Division pursuant to G.S. 20-24. (1985, c. 764, s. 3; 1985 (Reg. Sess., 1986), c. 852, s. 3; 1987, c. 581, s. 3.)

Editor's Note. — This section was formerly § 15A-1117, as enacted by Session Laws 1985, c. 764, s. 3. It was rewritten and recodified as this section by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 3, effective September 1, 1986.

Session Laws 1985, c. 764, s. 40 had originally provided that § 15A-1117 would become effective July 1, 1986. However, Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17 amends Session Laws 1985, c. 764, s. 40, so as to change the effective date of the section from July 1, 1986 to September 1, 1986. As amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, Session Laws 1985, c. 764, s. 40 provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense."

Session Laws 1987, c. 581, s. 6 provides that s. 3 of the act, which amended this section, shall be effective upon ratification, and shall apply to offenses committed on or after that date, but that revocation orders entered under § 20-24.1 in cases in which bail and collateral deposited to secure a defendant's appearance is forfeited shall be rescinded by the Division as soon as is reasonably possible. The act was ratified July 9, 1987.

Effect of Amendments. — The 1987 amendment, effective July 9, 1987, and applicable to offenses committed on or after that date, designated the first paragraph, with its subdivisions (1) and (2), as subsection (a), and added subsection (b).

§ 20-25. Right of appeal to court.

Any person denied a license or whose license has been canceled, suspended or revoked by the Division, except where such cancellation is mandatory under the provisions of this Article, shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district in which the violation was committed, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this Article. Provided, a judge of the district court shall have limited jurisdiction under this section to sign and enter a temporary restraining order only. (1935, c. 52, s. 19; 1975, c. 716, s. 5; 1987, c. 659, s. 1.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, added the last sentence.

CASE NOTES

This section creates no right to appeal a suspension under § 20-4.20(b). The General Assembly simply has not yet provided for appeals from suspension under § 20-4.20(b). Palmer v. Wilkins, 73 N.C. App. 171, 325 S.E.2d 697 (1985).

Cited in Gaither v. Peters, 63 N.C. App. 559, 305 S.E.2d 763 (1983); Mathis v. North Carolina DMV, 71 N.C. App. 413, 322 S.E.2d 436 (1984); Smith v. Wilkins, 75 N.C. App. 483, 331 S.E.2d 159 (1985); In re Vallender, 81 N.C. App. 291, 344 S.E.2d 62 (1986).

§ 20-26. Records; copies furnished; charge.

(e) In the event of a mistake on the part of any person in ordering license records under subsection (c) of this section, the Commissioner may refund or credit to that person up to sixty-five percent (65%) of the amount paid for the license records.

(f) On and after July 1, 1988, the Division shall expeditiously furnish to insurance agents, insurance companies, and to insurance support organizations as defined in G.S. 58-383(12), for the purpose of rating nonfleet private passenger motor vehicle insurance policies, through electronic data processing means or otherwise, copies of or information pertaining to license records that are required to be kept pursuant to subsection (a) of this section. (1935, c. 52, s. 20; 1961, c. 307; 1969, c. 783, s. 3; 1971, c. 486, s. 1; 1975, c. 716, s. 5; 1979, c. 667, s. 23; c. 903, ss. 9, 10; 1981, c. 145, s. 1; c. 412, s. 4; c. 690, s. 13; c. 747, s. 66; 1983, c. 435, s. 20; c. 761, s. 149; 1987, c. 869, s. 16.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987, c. 869, s. 19 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective August 14, 1987, added subsections (e) and (f).

§ 20-28. Unlawful to drive while license suspended or revoked.

(a1) A person convicted under subsection (a) shall be punished as if he had been convicted of driving without a driver's license under G.S. 20-7 if he demonstrates to the court that:

(1) At the time of the offense, his license was revoked solely under G.S. 20-16.5; and

(2) a. The offense occurred more than 30 days after the effective date of a revocation order issued under G.S. 20-16.5(f) and the period of revocation was 30 days as provided under subdivision (3) of that subsection; or

b. The offense occurred more than 10 days after the effective date of the revocation order issued under any other provision of G.S. 20-16.5.

In addition, a person punished under this subsection shall be treated for driver's license and insurance rating purposes as if he had been convicted of driving without a license under G.S. 20-7, and the conviction report sent to the Division must indicate that the person is to be so treated.

(1935, c. 52, s. 22; 1945, c. 635; 1947, c. 1067, s. 16; 1955, c. 1020, s. 1; c. 1152, s. 18; c. 1187, s. 20; 1957, c. 1046; 1959, c. 515; 1967, c. 447; 1973, c. 47, s. 2; cc. 71, 1132; 1975, c. 716, s. 5; 1979, c 377, ss. 1, 2; c. 667, s. 41; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 51; 1983 (Reg. Sess., 1984), c. 1101, s. 18A.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, added subsection (a1).

CASE NOTES

I. GENERAL CONSIDERATION.

Actual or Constructive Knowledge, etc. —

The surrendering of defendant's license to the trial court, and the forwarding of it to the DMV, gave defendant sufficient notice that his driver's license had been revoked. State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894, cert. denied, 313 N.C. 606, 332 S.E.2d 80 (1985).

Requirements of Necessity Defense Not Met. — Regardless of whether the defense of necessity should be recognized in North Carolina, the evidence in defendant's case clearly did not meet the requirements of this defense. State v. Gainey, 84 N.C. App. 107, 351 S.E.2d 819 (1987).

Applied in State v. Beasley, 66 N.C. App. 288, 311 S.E.2d 347 (1984); State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894 (1985); State v. Cooney, 72 N.C. App. 649, 325 S.E.2d 15 (1985); State v. Carrington, 74 N.C. App. 40, 327 S.E.2d 594 (1985).

Cited in State v. Gooden, 65 N.C. App. 669, 309 S.E.2d 707 (1983); State v. Scott, 71 N.C. App. 570, 322 S.E.2d 613 (1984); State v. Graves, 83 N.C. App. 126, 349 S.E.2d 320 (1986).

II. PROCEDURE.

Admission into evidence of defendant's prior convictions for driving while impaired and for hit-and-run did not unfairly prejudice defendant in prosecution for driving while his license was revoked, where defendant admitted driving van while his license was re-

voked. State v. Gainey, 84 N.C. App. 107, 351 S.E.2d 819 (1987).

Admission of evidence concerning defendant's convictions for failure to follow a truck route and improper turning was improper under § 8C-1, Rule 609, but the error was not prejudicial to the defendant in prosecution for driving while his license was revoked, where defendant admitted driving van while his license was revoked. State v. Gainey, 84 N.C. App. 107, 351 S.E.2d 819 (1987).

§ 20-28.1. Conviction of moving offense committed while driving during period of suspension or revocation of license.

Editor's Note. — The above catchline has been set out at the direction of the Revisor of Statutes to reflect a change necessitated by the amendment to the section made by Session Laws 1979, c. 378, s. 2.

CASE NOTES

Odometer alteration prohibited by § 20-343 is a violation of the motor vehicle laws of North Carolina as that term is used in subsection (c) of this section. Evans v. Roberson, 314 N.C. 315, 333 S.E.2d 228 (1985).

§ 20-28.2. Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.

(a) Meaning of "Impaired Driving License Revocation". — The revocation of a person's driver's license is an impaired driving license revocation if the revocation is pursuant to:

(1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.4, 20-16.5, 20-17(2), or 20-17.2; or

(2) G.S. 20-16(a)(7), 20-17(1), or 20-17(9), if the offense involves impaired driving.

(1983, c. 435, s. 21; 1983 (Reg. Sess., 1984), c. 1101, s. 19.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, substituted "G.S. 20-16(a)(7)" for "G.S. 20-16(7)" in subdivision (a)(2).

§ 20-30. Violations of license or learner's permit provisions.

CASE NOTES

The offense described in § 20-30(5) is not a lesser included offense of § 20-31 dealing with perjury. State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894, cert. denied, 313 N.C. 606, 332 S.E.2d 80 (1985).

§ 20-31. Making false affidavits perjury.

CASE NOTES

The offense described in § 20-30(5) is not a lesser included offense of this section. State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894, cert. denied, 313 N.C., 606, 332 S.E.2d 80 (1985).

Article 2A.

Afflicted, Disabled or Handicapped Persons.

§ 20-37.6. Handicapped; drivers and passengers; parking privileges.

(a) Any vehicle driven by or transporting a person who is handicapped as defined by G.S. 20-37.5 or transporting a person who is visually impaired as defined by G.S. 111-11, as certified by a licensed ophthalmologist, optometrist, or Division of Services for the Blind, may be parked for unlimited periods in parking zones restricted as to length of time parking is permitted. This provision has no application to those zones or during times in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. Any qualifying vehicle may park in spaces designated by aboveground markings as restricted to vehicles distinguished as being driven by or as transporting the handicapped or as transporting the visually impaired.

(b) Handicapped Car Owners; Distinguishing License Plates. — If the handicapped or visually impaired person is a registered owner of a vehicle, this vehicle may display a distinguishing license plate. This license plate shall be issued for the normal fee applicable to standard license plates. Any vehicle owner who qualifies for a distinguishing license plate may also receive up to two distinguishing placards as provided for in G.S. 20-37.6(c).

(c) Handicapped Drivers and Passengers; Distinguishing Placards. — A person who is either handicapped or visually impaired may apply for issuance of a distinguishing placard to be designed by the Division of Motor Vehicles of the Department of Transportation, in cooperation with the Office for the Handicapped of the Department of Insurance. Any organization which, as determined and certified by the State Vocational Rehabilitation Agency, regularly transports handicapped or visually impaired people, may also apply. The placard shall be at least 6 inches by 12 inches in size and shall contain all the information the Division of Motor Vehicles deems necessary for purpose of designation and enforcement. The placard shall be displayed on the driver's side of the dashboard of a vehicle only when the vehicle is being driven by a duly licensed handicapped driver or is being used to transport handicapped or visually impaired passengers. When the placard is properly displayed, all parking rights and privileges extended to vehicles displaying a distinguishing license plate issued pursuant to G.S. 20-37.6(b) shall apply. The Division of Motor Vehicles shall establish procedures for the issuance of the distinguishing placards, may charge a fee sufficient to pay the actual cost of issuance. Two placards may be issued to an applicant on request. Applicants who are

organizations may receive one placard for each transporting vehicle.

(d) Designation of Parking Places. — Designation of parking spaces for the physically handicapped and the visually impaired on streets and in other areas, including public vehicular areas specified in G.S. 20-4.01(32), shall be by the use of sign R7-8 for multiple parking spaces as shown in the Manual on Uniform Traffic Control Devices, or sign R7-8a for single parking spaces as shown in the N. C. Department of Transportation Supplement to the Manual on Uniform Traffic Control Devices. Nonconforming signs in use prior to July 1, 1979, shall not constitute a violation of G.S. 20-37.6(e)(4) during their useful lives, which shall not be extended by other means than normal maintenance. These nonconforming signs shall be removed and be replaced with conforming signs before January 1, 1989; provided that a sign or symbol painted on the surface of a parking space need not be removed when a conforming sign is erected.

(d1) Unique Properties. — The owner of private property which contains a public vehicular area, on which is to be designated one or more parking spaces for the physically handicapped and the visually impaired, may file a written certification, on a form supplied by the Department of Transportation, that signs conforming to G.S. 20-37.6(d) would not be compatible with the unique visual character of the property. Upon filing of the certification with the Department of Transportation, the owner may cause to be erected signs of materials and colors different from signs R7-8 and R7-8a. The signs shall be the same size and shape as signs R7-8 or R7-8a, as appropriate, with the same letters, words, numbers and symbols. Such signs shall be deemed to conform to G.S. 20-37.6(d).

(e) Enforcement of Handicapped Parking Privileges. — It shall be unlawful:

(1) To park or leave standing any vehicle in a space designated with a sign pursuant to subsection (d) of this section for handicapped persons or visually impaired persons when the vehicle does not display the distinguishing license plate or placard as provided in this section or a disabled veteran registration plate issued pursuant to G.S. 20-81.4[;]

(2) For any person not qualifying for the rights and privileges extended to handicapped or visually impaired persons under this section to exercise or attempt to exercise such rights or privileges by the unauthorized use of a distinguishing license plate or placard issued pursuant to the provisions of this section;

(3) To park or leave standing any vehicle so as to obstruct a curb ramp or curb cut for handicapped persons as provided for by North Carolina Building Code or as designated in G.S. 136-44.14;

(4) For those responsible for designating parking spaces for the handicapped to erect or otherwise use signs not conforming to G.S. 20-37.6(d) for this purpose.

This section is enforceable in all public vehicular areas specified in G.S. 20-4.01(32).

(f) Penalties for violation.

(1) A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of twenty-five dollars ($25.00) and

whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be prima facie evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division of Motor Vehicles. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section.

(2) A violation of G.S. 20-37.6(e)(4) is an infraction which carries a penalty of fifty dollars ($50.00) and whenever evidence shall be presented in any court of the fact that any such nonconforming sign or markings are being used it shall be prima facie evidence in any court in the State of North Carolina that the person, firm, or corporation with ownership of the property where said nonconforming signs or markings are located is reponsible for violation of this section. Building inspectors and others responsible for North Carolina State Building Code violations specified in G.S. 143-138(h) where such signs are required by the Handicapped Section of the North Carolina State Building Code, may cause a citation to be issued for this violation and may also initiate any appropriate action or proceeding to correct such violation.

(3) A law-enforcement officer, including security officer who has authority to enforce laws on the property of his employer as specified in Chapter 74A, may cause a vehicle parked in violation of this section to be towed; and such officer shall be a legal possessor as provided in G.S. 20-161(d)(2). This law-enforcement officer, or security officer, shall not be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any motor vehicle removed from such space pursuant to this section, except where such motor vehicle is willfully, maliciously, or negligently damaged in the removal from aforesaid space to place of storage.

(4) Notwithstanding any other provision of the General Statutes, the provisions of this section relative to handicapped parking shall be enforced by State, county, city and other municipal authorities in their respective jurisdictions whether on public or private property in the same manner as is used to enforce other parking laws and ordinances by said agencies. (1971, c. 374, s. 1; 1973, cc. 126, 1384; 1977, c. 340, s. 2; 1979, c. 632; 1981, c. 682, s. 7; 1983, c. 326, ss. 1, 2; 1985, c. 249; c. 586; c. 764, s. 24; 1987, c. 843.)

Local Modification. — City of Charlotte: 1987, c. 225.

Editor's Note. — Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense.

Effect of Amendments. —

Session Laws 1985, c. 249, effective

October 1, 1985, substituted "for multiple parking spaces as shown in the Manual on Uniform Traffic Control Devices, or sign R7-8a for single parking spaces as shown in the N.C. Department of Transportation Supplement to the Manual on Uniform Traffic Control Devices" for "Manual on Uniform Traffic Control Devices" at the end of the first sentence of subsection (d).

Session Laws 1985, c. 586, effective October 1, 1985, added "or a disabled veteran registration plate issued pursuant to G.S. 20-81.4" at the end of subdivision (e)(1).

Session Laws 1985, c. 764, s. 24, effective September 1, 1986, and applicable to offenses committed on or after that date, substituted "A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of" for "The penalty for a violation of G.S. 20-37.6(e)(1), (2) and (3) shall be" at the beginning of subdivision (f)(1) and substituted "A violation of G.S. 20-37.6(e)(4) is an infraction which carries a penalty of" for "The penalty for violation of G.S. 20-37.6(e)(4) shall be" at the beginning of subdivision (f)(2).

The 1987 amendment, effective October 1, 1987, inserted "of G.S. 20-37.6(e)(4)" in the second sentence of subsection (d), added the third sentence of subsection (d), and added subsection (d1).

Article 2B.

Special Identification Cards for Nonoperators.

§ 20-37.7. Special identification card.

(a) The Division of Motor Vehicles shall upon satisfactory proof of identification issue a special identification card to any person 11 years or older who is a resident of the State of North Carolina.

(b) Every application for a special identification card shall be made on the approved form furnished by the Division and shall be accompanied by a birth certificate and other proof of identification which shall be returned when the special identification card is issued.

(c) Special identification cards shall be issued with differing color photographic backgrounds according to the holder's age at time of issuance for the following age groups:

(1) Persons who have not attained the age of 21 years.

(2) Persons who have attained the age of 21 years.

The card shall be similar in size, shape, and design to a driver's license, but shall clearly state that it does not entitle the person to whom it is issued to operate a motor vehicle.

(d) A special identification card issued under this section shall expire on the birth date of the holder in the fourth year of issuance. The fee for the issuance or reissuance of a special identification card shall be five dollars ($5.00) which shall be placed in the Highway Fund; provided that a special identification card may be issued without fee to a resident of North Carolina who is legally blind or has attained the age of 70 years; provided further that the fees collected for the issuance of special identification cards to persons under the age of 16 shall be placed in a reserve fund to cover the cost of the operation of the program required by this Article.

(e) Any fraud or misrepresentation in the application for or use of a special identification card issued under this section is a misdemeanor, punishable by a fine of not more than five hundred dollars ($500.00) or by imprisonment of 90 days, or both.

(f) The Division of Motor Vehicles shall maintain a record of all recipients of a special identification card. The Division may promul-

gate any rules and regulations it deems necessary for the effective implementation of the provisions of this section.

(g) The fact of issuance of a special identification card pursuant to this section shall not place upon the State of North Carolina or any agency thereof any liability for the misuse thereof and the acceptance thereof as valid identification is a matter left entirely to the discretion of any person to whom such card is presented.

(h) The Division may utilize the various communications media throughout the State to inform North Carolina residents of the provisions of this section. (1973, c. 438, s. 1; 1975, c. 716, s. 5; 1979, c. 469, c. 667, s. 30; 1981, c. 673, ss. 1, 2; c. 690, s. 12; 1981 (Reg. Sess., 1982), c. 1257, s. 3; 1983, c. 443, s. 2; 1983 (Reg. Sess., 1984), c. 1062, s. 7; 1985, c. 141, s. 5.)

Editor's Note. — Session Laws 1985, c. 141, s. 6, provides that the amendment thereby shall become effective September 1, 1986. Section 6 further provides that if the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of 1982 relating to National Uniform Drinking Age of 21 as found in Section 6 of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, then ss. 1, 2, 2.1, 4 and 5 of the act shall expire upon the certification of the Secretary of State that the federal mandate has been repealed or has been invalidated, and the statutes amended by ss. 1, 2, 2.1, 4 and 5 shall revert to the form they would have without the amendments made by these sections.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective January 1, 1985, substituted "11 years" for "16 years" in subsection (a), added the language "and shall be accompanied by a birth certificate and other proof of identification which shall be returned when the special identification card is issued" at the end of subsection (b), and in subsection (d) deleted "automatically" preceding "expire" and substituted "fourth year of issuance" for "fourth year following the year of issuance" in the first sentence, inserted "which shall be placed in the Highway Fund" following "($5.00)" near the beginning of the second sentence, and added the proviso at the end of the second sentence, relating to a reserve fund.

The 1985 amendment, effective September 1, 1986, substituted present subdivisions (c)(1) and (c)(2) for former subdivisions (c)(1), (c)(2), and (c)(3), which read: "(1) Persons who have not attained the age of 19 years; (2) Persons who have attained the age of 19 years but have not attained the age of 21 years; and (3) Persons who have attained the age of 21 years."

CASE NOTES

Cited in State v. Fair, 77 N.C. App. 681, 335 S.E.2d 783 (1985).

Article 3.

Motor Vehicle Act of 1937.

Part 2. Authority and Duties of Commissioner and Division.

§ 20-39. Administering and enforcing laws; rules and regulations; agents, etc.; seal; fees; licenses and plates for undercover officers.

(h) The Commissioner, notwithstanding any other provision of this Chapter, may lawfully and to the extent necessary, provide local, state or federal law-enforcement officers on special undercover assignments with motor vehicle operator's licenses and motor vehicle registration plates under assumed names using false or fictitious addresses. Such registration plates shall only be used on publicly owned vehicles. Requests for these licenses and registration plates shall be made to the Commissioner by the head of the local, state or federal law-enforcement agency and approved in writing by the Director of the State Bureau of Investigation upon a specific finding by the Director that the request is justified and necessary. The Director shall keep a record of all such licenses, registration plates, assumed names, false or fictitious addresses, and law-enforcement officers using the licenses or registration plates, and shall request the immediate return of any license or registration plate that is no longer necessary. Licenses and registration plates provided under this subsection shall expire six months after initial issuance or subsequent validation after the request for extension has been approved in writing by the Director of the State Bureau of Investigation. The head of the local, state or federal law-enforcement agency shall be responsible for the use of the licenses and registration plates and shall return them immediately to the Commissioner for cancellation upon either (i) their expiration, (ii) request of the Director of the State Bureau of Investigation, or (iii) request of the Commissioner. Failure to return a license or registration plates issued pursuant to this subsection shall be punished as a general misdemeanor. At no time shall the number of valid licenses and registration plates issued under this act exceed one hundred, and those issued shall be strictly monitored by the Director. (1937, c. 407, s. 4; 1975, c. 716, s. 5; 1979, 2nd Sess., c. 1180, s. 1; 1983, c. 223; c. 629, s. 2; c. 768, ss. 25.1, 25.2; 1985, c. 767, ss. 1, 2; 1987, c. 552.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. —

The 1985 amendment, effective July 15, 1985, added subsection (h).

The 1987 amendment, effective July 7, 1987, substituted "local, state or federal" for "local" throughout subsection (h).

§ 20-48. Giving of notice.

(c) The Commissioner shall appoint such agents of the Division as may be needed to serve revocation notices required by this Chapter. The fee for service of a notice shall be fifty dollars ($50.00). (1937, c. 407, s. 13; 1955, c. 1187, s. 21; 1971, c. 1231, s. 1; 1975, c. 326, s. 3; c. 716, s. 5; 1983, c. 761, s. 148; 1985, c. 479, s. 171.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1985, c. 479, s. 1.1 provides that the act shall be known as "The Current Operations Appropriations Act of 1985."

Session Laws 1985, c. 479, s. 230 is a severability clause.

Effect of Amendments. —

The 1985 amendment by c. 479, s. 171, as amended by Session Laws 1985, c. 757, s. 176, effective Oct. 1, 1985, deleted the former third sentence of subsection (c), which read "Agents employed under this section to serve revocation notices full time, and any Law-Enforcement Officer I whose duties include serving such notices on a regular basis and the five law-enforcement officers who supervise them, shall be exempt from the commuting fees provided in G.S. 143-341(8)(i)7a."

CASE NOTES

Prima Facie Presumption, etc. — For purposes of a conviction for driving while license is suspended or revoked, mailing of the notice under this section raises only a prima facie presumption that defendant received the notice and thereby acquired knowledge of the suspension or revocation. Thus, defendant is not by this statute denied the right to rebut this presumption. State v. Curtis, 73 N.C. App. 248, 326 S.E.2d 90 (1985).

The state satisfies, etc. —

In accord with original. See State v. Curtis, 73 N.C. App. 248, 326 S.E.2d 90 (1985).

Applied in State v. Finger, 72 N.C. App. 569, 324 S.E.2d 894 (1985).

§ 20-49. Police authority of Division.

CASE NOTES

Inspection of a car's identification number differs from a search of a vehicle and seizure of its contents in one important aspect. The occupants of the car cannot harbor an expectation of privacy concerning the identification of the vehicle. State v. Baker, 65 N.C. App. 430, 310 S.E.2d 101 (1983), cert. denied, 312 N.C. 85, 321 S.E.2d 900 (1984).

A police officer should be freer to inspect the identification number without a warrant than he is to search a car for purely private property. State v. Baker, 65 N.C. App. 430, 310 S.E.2d 101 (1983), cert. denied, 312 N.C. 85, 321 S.E.2d 900 (1984).

The state requires manufacturers to identify vehicles by affixing identification numbers which are also recorded in registries where the police and any interested person may inspect them. Since identification numbers are, at the least, quasi-public information, a search of that part of the car displaying the number is but a minimal invasion of a person's privacy. State v. Baker, 65 N.C. App. 430, 310 S.E.2d 101 (1983), cert. denied, 312 N.C. 85, 321 S.E.2d 900 (1984).

Part 3. Registration and Certificates of Titles of Motor Vehicles.

§ 20-50.2. Applicant to certify as to ad valorem taxes on vehicle.

(c) Any applicant who shall make a false certification concerning the information required by this section shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed one hundred dollars ($100.00) or imprisonment not to exceed six months, or both such fine and imprisonment. The imposition of a civil penalty under G.S. 105-312(h1) shall be a bar to criminal prosecution under this section, where the same failure to list is at issue. (1981, c. 728, s. 1; 1987, c. 743, s. 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective for taxable years beginning on or after January 1, 1988, added the last sentence of subsection (c).

§ 20-51. Exempt from registration.

The following shall be exempt from the requirement of registration and certificate of title:

(5) Farm tractors equipped with rubber tires and trailers or semitrailers when attached thereto and when used by a farmer, his tenant, agent, or employee in transporting his own farm implements, farm supplies, or farm products from place to place on the same farm, from one farm to another, from farm to market, or from market to farm. This exemption shall extend also to any tractor, implement of husbandry, and trailer or semitrailer while on any trip within a radius of 10 miles from the point of loading, provided that the vehicle does not exceed a speed of 35 miles per hour. This section shall not be construed as granting any exemption to farm tractors, implements of husbandry, and trailers or semitrailers which are operated on a for-hire basis, whether money or some other thing of value is paid or given for the use of such tractors, implements of husbandry, and trailers or semitrailers.

(1937, c. 407, s. 16; 1943, c. 500; 1949, c. 429; 1951, c. 705, s. 2; 1953, c. 826, ss. 2, 3; c. 1316, s. 1; 1961, cc. 334, 817; 1963, c. 145; 1965, c. 1146; 1971, c. 107; 1973, cc. 478, 757, 964; 1979, c. 574, s. 6; 1981 (Reg. Sess., 1982), c. 1286; 1983, cc. 288, 732; 1987, c. 608.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective July 13, 1987, inserted "implement of husbandry" and added "provided that the vehicle does not exceed a speed of 35 miles per hour" in the second sentence of subdivision (5), and inserted "implements of husbandry" in two places in the third sentence of subdivision (5).

§ 20-52. Application for registration and certificate of title.

CASE NOTES

Applied in State v. Baker, 65 N.C. App. 430, 310 S.E.2d 101 (1983).

§ 20-52.1. Manufacturer's certificate of transfer of new motor vehicle.

Legal Periodicals. — For 1984 survey, "The Application of the North Carolina Motor Vehicle Act and the Uniform Commercial Code to the Sale of Motor Vehicles by Consignment," see 63 N.C.L. Rev. 1105 (1985).

CASE NOTES

Section not replaced by U.C.C. — The decision of the Court of Appeals in American Clipper Corp. v. Howerton, 51 N.C. App. 539, 277 S.E.2d 136 (1981), cited under the above catchline in the original, was reversed by the Supreme Court in American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984).

This section is one segment of an entire statutory scheme of police regulations designed and intended to provide a simple expeditious mode of tracing titles to motor vehicles so as to (1) facilitate the enforcement of the highway safety statutes, (2) minimize the hazards of theft, and (3) provide safeguards against fraud, imposition, and sharp practices in connection with the sale and transfer of motor vehicles. American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984).

This section was designed for the protection of the public generally, to regulate the transfer of new motor vehicles from manufacturers to dealers and, ultimately, to consumers. American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984).

This section was not designed to provide a method for manufacturers to protect themselves against their dealers' defaults by withholding manufacturer's statements of origin on vehicles transferred to dealers for ultimate sale to consumers. American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984)

Subsection (a) of this section is not permissive. American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984).

Cited in Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867 (1985).

§ 20-58. Perfection by indication of security interest on certificate of title.

CASE NOTES

A security interest in a mobile home is subject to the same perfection requirements as an automobile. Carter v. Holland (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

Sale Contemplating Regular Use Subjects Vehicle to Statute. — Once a sale of an automobile has occurred contemplating regular use, whether it be a sale of a complete or limited interest, the vehicle is then subject to North Carolina's certificate of title statute, § 20-58 et seq. Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867 (1985).

Late-perfected security interest is not retroactively valid against an innocent third party who acquired an automobile for value. Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867 (1985).

Cited in In re Millerburg, 61 Bankr. 125 (Bankr. E.D.N.C. 1986).

§ 20-58.1. Duty of the Division upon receipt of application for notation of security interest.

Legal Periodicals. — For 1984 survey, "The Application of the North Carolina Motor Vehicle Act and the Uniform Commercial Code to the Sale of Motor Vehicles by Consignment," see 63 N.C.L. Rev. 1105 (1985).

CASE NOTES

Late-perfected security interest is not retroactively valid against an innocent third party who acquired an automobile for value. Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867 (1985).

§ 20-58.2. Date of perfection.

CASE NOTES

Date of Perfection of Security Interest. —

Under this section, perfection of the security interest in a motor vehicle occurs when the application and proper fee are delivered to the Division of Motor Vehicles. Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867 (1985).

Perfection by notation on an automobile's certificate of title occurs when the application and proper fee are delivered to the DMV. In re Millerburg, 61 Bankr. 125 (Bankr. E.D.N.C. 1986).

Late-perfected security interest is not retroactively valid against an innocent third party who acquired an automobile for value. Bank of Alamance v. Isley, 74 N.C. App. 489, 328 S.E.2d 867 (1985).

Quoted in Carter v. Holland (In re Carraway), 65 Bankr. 51 (Bankr. E.D.N.C. 1986).

§ 20-58.8. Applicability of §§ 20-58 to 20-58.8; use of term "lien."

CASE NOTES

Car held in inventory by a used car business fell within the provisions of subdivision (b)(3) of this section and § 25-9-302(3)(b). North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Applied in American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984).

§ 20-63. Registration plates furnished by Division; requirements; replacement of regular plates with First in Flight plates; surrender and reissuance; displaying; preservation and cleaning; alteration or concealment of numbers; commission contracts for issuance.

(d) Registration plates issued for a motor vehicle other than a motorcycle, trailer, or semitrailer shall be attached thereto, one in

the front and the other in the rear: Provided, that when only one registration plate is issued for a motor vehicle other than a truck-tractor, said registration plate shall be attached to the rear of the motor vehicle. The registration plate issued for a truck-tractor shall be attached to the front thereof. Provided further, that when only one registration plate is issued for a motor vehicle and this motor vehicle is transporting a substance that may adhere to the plate so as to cover or discolor the plate or if the motor vehicle has a mechanical loading device that may damage the plate, the registration plate may be attached to the front of the motor vehicle.

Any motor vehicle of the age of 35 years or more from the date of manufacture may bear the license plates of the year of manufacture instead of the current registration plates, if the current registration plates are maintained within the vehicle and produced upon the request of any person.

(1937, c. 407, s. 27; 1943, c. 726; 1951, c. 102, ss. 1-3; 1955, c. 119, s. 1; 1961, c. 360, s. 4; c. 861, s. 2; 1963, c. 552, s. 6; c. 1071; 1965, c. 1088; 1969, c. 1140; 1971, c. 945; 1973, c. 629; 1975, c. 716, s. 5; 1979, c. 470, s. 1; c. 604, s. 1; c. 917, s. 4; 1981, c. 750; c. 859, s. 76; 1983, c. 253, ss. 1-3; 1985, c. 257.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1983, c. 761, s. 140, provides that notwithstanding § 105-164.4(1), the Department of Transportation may deduct and retain from the sales tax on motor vehicles an amount equal to the cost to the Division of collecting this tax, not to exceed $475,000 per year, and that the cost of collecting this tax shall be determined by Secretary of Transportation subject to the approval of the State Budget Officer. As amended by Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 202, and Session Laws 1987, c. 738, s. 172, the 1983 act further provides that notwithstanding § 20-63(h) the cost of collection shall include an increase in the commission paid to the branch agents of Division to 72¢ per transaction. Session Laws 1983, c. 923, s. 217, makes s. 140 of c. 761 effective Aug. 1, 1983. Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 257, makes c. 1034 effective July 1, 1984. Session Laws 1987, c. 738, s. 238 makes s. 172 of c. 738 effective July 1, 1987.

Session Laws 1983, c. 761, s. 259, Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256, and Session Laws 1987, c. 738, s. 237 are severability clauses.

Effect of Amendments. —

The 1985 amendment, effective May 24, 1985, added the last sentence of subsection (d).

§ 20-66. Renewal of registration; semipermanent plates issued; renewal sticker annually; fees.

(d) The Division may also provide for the issuance of license plates for motor vehicles with the dates of expiration thereof to vary from month to month so as to approximately equalize the number that expire during a registration period of one or two years. A person may purchase a license plate for a period of two years, but the Division shall not solicit, encourage, or require the purchase of a license plate for a period of more than one year.

(1937, c. 407, s. 30; 1955, c. 554, s. 3; 1973, c. 1389, s. 1; 1975, c. 716, s. 5; 1977, c. 337; 1979, 2nd Sess., c. 1280, ss. 2, 3; 1981 (Reg. Sess., 1982), c. 1258, s. 1; 1985 (Reg. Sess., 1986), c. 982, s. 24.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective July 11, 1986, substituted "a registration period of one or two years" for "the registration year" at the end of the first sentence of subsection (d) and added the second sentence of subsection (d).

§ 20-71.1. Registration evidence of ownership; ownership evidence of defendant's responsibility for conduct of operation.

CASE NOTES

Legislative Intent. —

This statute shows a clear legislative intent to provide victims of highway collisions with the opportunity to recover from the owner as well as the driver of the vehicle involved in the accident. It enables the plaintiff relying on an agency theory to submit a prima facie case to the jury. DeArmon v. B. Mears Corp., 67 N.C. App. 640, 314 S.E.2d 124 (1984), rev'd in part, 312 N.C. 749, 325 S.E.2d 223 (1985).

North Carolina has an obligation to protect persons using North Carolina roads built and maintained to a large degree with North Carolina taxpayers' funds, whether they are citizens of this State or out-of-state citizens. DeArmon v. B. Mears Corp., 67 N.C. App. 640, 314 S.E.2d 124 (1984), rev'd in part, 312 N.C. 749, 325 S.E.2d 223 (1985).

Purpose of Section. —

The sole purpose of subsection (b) is to facilitate proof of ownership and agency where a vehicle is operated by one other than the owner. The statute makes out a prima facie case which, nothing else appearing, permits but does not compel a finding for plaintiff on the issue of agency. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

Subsection (b) shifts the burden of going forward with evidence to those persons better able to establish the facts than are plaintiffs. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

Section Applies Only Where, etc. —

Since the owner of a vehicle may be held liable for the negligence of an non-owner/operator under the doctrine of respondeat superior, proof of ownership is sufficient to take the case to the jury on the question of the legal responsibility of the defendant for the operation of the vehicle. DeArmon v. B. Mears Corp., 67 N.C. App. 640, 314 S.E.2d 124 (1984), rev'd in part, 312 N.C. 749, 325 S.E.2d 223 (1985).

This section merely creates a rule, etc. —

The prima facie showing of agency under subsection (b) is a rule of evidence and not one of substantive law. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

The relationship of lessor and lessee is not that of principal and agent. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

Proof of ownership is prima, etc. —

Where the owner of equipment leases both the equipment and operator to another under circumstances wherein the owner retains control over the manner in which the equipment is to be operated, the operator may be the agent of the owner-lessor. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

Where an owner of a truck leases both the truck and driver to another, the operator of the truck is not thereafter the agent of the owner if by the terms of the lease itself or other circumstances the owner relinquishes all right to control the truck's operation. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

But Prima Facie Case, etc. —

Where a trial judge is presented only with a prima facie showing of agency mandated by subsection (b) on the one hand, and defendant's evidence establishing the absence of agency on the other, the only issue becomes whether the judge believes defendant's evidence. If the judge does, then plaintiff's prima facie showing disappears and the judge must conclude that no agency relationship exists. If he does not believe defendant's evidence, then he may conclude for plaintiff on the agency issue. Either conclusion must be based on proper find-

ings. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

Peremptory Instruction, etc. — Where plaintiff relies solely upon subsection (b), presenting no other evidence of agency, and defendant presents positive, contradicting evidence which, if believed, establishes the nonexistence of an agency relationship between owner and operator, defendant is entitled to a peremptory instruction on the agency, issue, or in a nonjury hearing, to a conclusion, based on proper findings, that no agency relationship exists. The statutory presumption is not weighed against defendant's evidence by the trier of facts. DeArmon v. B. Mears Corp., 312 N.C. 749, 325 S.E.2d 223 (1985).

Cited in Mercer v. Crocker, 73 N.C. App. 634, 327 S.E.2d 31 (1985); Lawing v. Lawing, 81 N.C. App. 159, 344 S.E.2d 100 (1986).

Part 3A. Salvage Titles.

§ 20-71.2. Declaration of purpose.

The titling of salvage motor vehicles constitutes a problem in North Carolina because members of the public are sometimes misled into believing a motor vehicle has not been damaged by collision, fire, flood, accident, or other cause or that the vehicle has not been altered, rebuilt, or modified to such an extent that it impairs or changes the original components of the motor vehicle. It is therefore in the public interest that the Commissioner of Motor Vehicles issue rules to give public notice of the titling of such vehicles and to carry out the provisions of this Part of the motor vehicle laws of North Carolina. (1987, c. 607, s. 1.)

Editor's Note. — Session Laws 1987, c. 607, s. 3 makes this Part effective January 1, 1988.

§ 20-71.3. Titles and registration cards to be branded.

Motor Vehicle certificates of title and registration cards issued pursuant to G.S. 20-57 shall be branded. As used herein "branded" means that the title and registration card shall contain a designation that discloses if the vehicle is classified as (a) Flood Vehicle, (b) Non-U.S.A. Vehicle, (c) Reconstructed Vehicle, (d) Salvage Motor Vehicle, or (e) Salvage Rebuilt Vehicle or other classification authorized by law. Any motor vehicle which has been branded in another state shall be branded with the nearest applicable brand specified in this section, except that no junk vehicle or vehicle that has been branded junk in another state shall be titled or registered. The Commissioner shall prepare necessary forms and may adopt regulations required to carry out the provisions of this Part 3A. The title shall reflect the branding until surrendered to or cancelled by the Commissioner. (1987, c. 607, s. 1.)

§ 20-71.4. Failure to disclose damage to a vehicle shall be a misdemeanor.

It shall be unlawful and constitute a misdemeanor for any person to fail to disclose to the transferee prior to transfer that the title and registration of the motor vehicle must be designated as branded or to make an application for or to obtain an unbranded title or registration to a motor vehicle when he knows, or reasonably should know, that a branded title or registration is required. (1987, c. 607, s. 1.)

Part 4. Transfer of Title or Interest.

§ 20-72. Transfer by owner.

CASE NOTES

When Title to Motor Vehicle Passes, etc. —

When a dealer transfers a vehicle registered under this chapter, it must execute a reassignment and warranty of title on the reverse of the certificate of title, and title to such vehicle shall not pass or vest until such reassignment is executed and the motor vehicle is delivered to the transferee. The dealer must also deliver the duly assigned certificate of title to the transferee or lienholder at the time the vehicle is delivered. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Passage of Title for Purposes, etc.—

In accord with main volume. See Roseboro Ford, Inc. v. Bass, 77 N.C. App. 363, 335 S.E.2d 214 (1985).

Duty of Purchaser to Secure, etc.—

There is no longer a requirement under the Motor Vehicle Act that a purchaser apply for a new certificate of title before title may pass or vest. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

For purposes of liability insurance coverage, ownership of a motor vehicle which requires registration under the Motor Vehicle Act of 1937 does not pass until transfer of legal title is effected as provided in subsection (b). Indiana Lumbermens Mut. Ins. Co. v. Unigard Indem. Co., 76 N.C. App. 88, 331 S.E.2d 741, cert. denied, 314 N.C. 666, 335 S.E.2d 494 (1985).

Controlling Effect of UCC over Security Interests and Priorities. —

Notwithstanding the title transfer provisions of the Motor Vehicle Act, an automobile purchaser may be a "buyer in the ordinary course of business" as that term is used in §§ 25-2-403 and 25-9-307, even though the certificate of title has not yet been reassigned. Moreover, it was the Legislature's intent to have the UCC control issues of security interests and priorities. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

The UCC should control over the Motor Vehicle Act when automobiles are used as collateral and are held in inventory for sale. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Buyers who gave value for a used car displayed on a dealer's lot and received a 20-day temporary marker in June, 1983, which car was covered by a dealer inventory security agreement in effect since April 1, 1970, and on which the credit company retained the title certificate, which was in the name of the dealer, had a superior right to possession of the car when the credit company's agent came to repossess it on June 19, 1983, as it was no longer part of the dealer's inventory; and buyers were entitled to possession of the car in their action for wrongful conversion. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Cited in American Clipper Corp. v. Howerton, 311 N.C. 151, 316 S.E.2d 186 (1984).

§ 20-75. When transferee is dealer or insurance company.

CASE NOTES

When a dealer transfers a vehicle registered under this chapter, it must execute a reassignment and warranty of title on the reverse of the certificate of title, and title to such vehicle shall not pass or vest until such reassignment is executed and the motor vehicle delivered to the transferee. The dealer must also deliver the duly assigned certificate of title to the transferee or lienholder at the time the vehicle is delivered. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Application for New Certificate of Title. — There is no longer a requirement under the Motor Vehicle Act that a purchaser apply for a new certificate of title before title may pass or vest. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Controlling Effect of UCC over Security Interests and Priorities. — Notwithstanding the title transfer provisions of the Motor Vehicle Act, an automobile purchaser may be a "buyer in the ordinary course of business" as that term is used in §§ 25-2-403 and 25-9-307, even though the certificate of title has not yet been reassigned. Moreover, it was the Legislature's intent to have the UCC control issues of security interests and priorities. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

The UCC should control over the Motor Vehicle Act when automobiles are used as collateral and are held in inventory for sale. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Buyers who gave value for a used car displayed on dealer's lot and received a 20-day temporary marker in June, 1983, which car was covered by a dealer inventory security agreement in effect since April 1, 1970, and on which the credit company retained the title certificate, which was in the name of the dealer, had superior right to possession of the car when the credit company's agent came to repossess it on June 19, 1983, as it was no longer part of the dealer's inventory; and buyers were entitled to possession of the car in their action for wrongful conversion. North Carolina Nat'l Bank v. Robinson, 78 N.C. App. 1, 336 S.E.2d 666 (1985).

Part 5. Issuance of Special Plates.

§ 20-79. Registration by manufacturers and dealers.

(a) Every manufacturer of or dealer in motor vehicles, trailers or semitrailers shall apply to the Motor Vehicle Division for a license as such upon official forms and shall in his application give the name of the manufacturer or dealer and his bona fide address of each partner; if a corporation, the name of the corporation and the state of incorporation; the bona fide address of the place of business; whether a dealer in new vehicles or in used vehicles and shall state how long in business. Upon receipt of said application the Division shall upon the payment of fees as required by law issue a license to such applicant, together with number plates, which plates shall bear thereon a distinctive number, the name of this State, which may be abbreviated, the year for which issued, together with the word dealer or a distinguishing symbol indicating that such plate or plates are issued to a dealer. The plates so issued may during the year for which issued be transferred from one vehicle to another owned and operated by such manufacturer or dealer.

Dealer and manufacturer plates shall after June 30, 1980, be issued on a fiscal year basis beginning July 1, and plates issued for

fiscal year beginning July 1 shall expire on June 30 following the date of issuance.

Any person to whom license and number plates are issued under the provisions of this subsection upon discontinuing business as a dealer or manufacturer shall forthwith surrender to the Division license and all number plates so issued to him.

No person, firm, or corporation shall engage in the business of buying, selling, distributing or exchanging motor vehicles, trailers or semitrailers in this State unless he or it qualifies for and obtains the license required by this section.

Any person, firm, or corporation violating any provision of this subsection shall be guilty of a misdemeanor and for each offense shall be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) and may be imprisoned for not more than 60 days, or both such fine and imprisonment.

(b) Every manufacturer of or dealer in motor vehicles shall obtain and have in his possession a certificate of title issued by the Division to such manufacturer or dealer of each vehicle owned and operated upon the highways by such manufacturer or dealer, except that a certificate of title shall not be required or issued for any new vehicle to be sold as such by a manufacturer or dealer prior to the sale of such vehicle by the manufacturer or dealer; and except that any dealer or any employee of any dealer may operate any motor vehicle, trailer or semitrailer, the property of the dealer, for the purpose of furthering the business interest of the dealer in the sale, demonstration and servicing of motor vehicles, trailers and semitrailers, of collecting accounts, contacting prospective customers and generally carrying out routine business necessary for conducting a general motor vehicle sales business: Provided, that no use shall be made of dealer's demonstration plates on vehicles operated in any other business dealers may be engaged in: Provided further, that dealers may allow the operation of motor vehicles owned by dealers and displaying dealer's demonstration plates in the personal use of persons other than those employed in the dealer's business: Provided further, that said persons shall, at all times while operating a motor vehicle under the provisions of this section, have in their possession a certificate on such form as approved by the Commissioner from the dealer, which shall be valid for not more than 96 hours. This certificate may be renewed for one additional 96-hour period, pursuant to rules and regulations promulgated by the Commissioner.

(c) No manufacturer of or dealer in motor vehicles, trailers or semitrailers shall cause or permit any such vehicle owned by such person to be operated or moved upon a public highway without there being displayed upon such vehicle a number plate or plates issued to such person, either under G.S. 20-63 or under this section.

(d) No manufacturer of or dealer in motor vehicles, trailers or semitrailers shall cause or permit any such vehicle owned by such person or by any person in his employ, which is in the personal use of such person or employee, to be operated or moved upon a public highway with a "dealer" plate attached to such vehicle.

(e) Transfer of Dealer Registration. — No change in the name of a firm, partnership or corporation, nor the taking in of a new partner, nor the withdrawal of one or more of the firm, shall be considered a new business; but if any one or more of the partners remain in the firm, or if there is change in ownership of less than a major-

ity of the stock, if a corporation, the business shall be regarded as continuing and the dealers' plates originally issued may continue to be used. (1937, c. 407, s. 43; 1947, c. 220, s. 2; 1949, c. 583, s. 3; 1951, c. 985, s. 2; 1959, c. 1264, s. 3.5; 1961, c. 360, s. 15; 1975, c. 716, s. 5; 1979, c. 239; c. 612, s. 1; 1985, c. 764, s. 21.)

Editor's Note. — Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense.

Effect of Amendments. — The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, added "and may be imprisoned for not more than 60 days, or both such fine and imprisonment" at the end of the last paragraph of subsection (a).

CASE NOTES

Applied in Kraemer v. Moore, 67 N.C. App. 505, 313 S.E.2d 610 (1984).

§ 20-79.1. Use of temporary registration plates or markers by purchasers of motor vehicles in lieu of dealers' plates.

(c) Every dealer who issues temporary registration plates or markers shall also issue a temporary registration certificate upon a form furnished by the Division and deliver it with the registration plate or marker to the owner.

(g) Every person to whom temporary registration plates or markers have been issued shall permanently destroy such temporary registration plates or markers immediately upon receiving the annual registration plates from the Division: Provided, that if the annual registration plates are not received within 30 days of the issuance of the temporary registration plates or markers, the owner shall, notwithstanding, immediately upon the expiration of such 30-day period, permanently destroy the temporary registration plates or markers.

(h) Temporary registration plates or markers shall expire and become void upon the receipt of the annual registration plates from the Division, or upon the rescission of a contract to purchase a motor vehicle, or upon the expiration of 30 days from the date of issuance, depending upon whichever event shall first occur. No refund or credit or fees paid by dealers to the Division for temporary registration plates or markers shall be allowed, except in the event that the Division discontinues the issuance of temporary registration plates or markers or unless the dealer discontinues business. In this event the unissued registration plates or markers with the unissued registration certificates shall be returned to the Division and the dealer may petition for a refund.

(1957, c. 246, s. 1; 1963, c. 552, s. 8; 1975, c. 716, s. 5; 1985, c. 95; c. 263.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — Session Laws 1985, c. 95, effective January 1, 1986, substituted "30" for "20" in two places in subsection (g) and in the first sentence of subsection (h).

Session Laws 1985, c. 263, effective January 1, 1986, substituted "deliver it with the registration plate or marker to the owner" for "deliver with the registration plate or marker to the owner and shall on the day that he issued such plate or marker, send to the Division a copy of the temporary registration issuance" at the end of subsection (c).

§ 20-79.2. Transporter registration.

(a) A person engaged in a business requiring the limited operation of motor vehicles to facilitate the manufacture, construction, rebuilding, or delivery of new or used truck cabs or bodies between manufacture, dealer, seller, or purchaser, or the foreclosure or repossession of motor vehicles, or the pickup and delivery of motor vehicles to be prepared for sale by dealers, or a public utility, as defined in G.S. 62-3(23)(a), engaged in the movement of replaced vehicles for sale, may apply to the Commissioner for special registration to be issued to and used by the person or utility upon the following conditions:

(1) Application for Registration. — Only one application shall be required from each person, and such application for registration under this section shall be filed with the Commissioner of Motor Vehicles in such form and detail as the Commissioner shall prescribe, setting forth:
   a. The name and residence address of applicant; if an individual, the name under which he intends to conduct business; if a partnership, the name and residence address of each member thereof, and the name under which the business is to be conducted; if a corporation, the name of the corporation and the name and residence address of each of its officers.
   b. The complete address or addresses of the place or places where the business is to be conducted.
   c. Such further information as the Commissioner may require.

(2) Applications for registration under this section shall be verified by the applicant, and the Commissioner may require the applicant for registration to appear at such time and place as may be designated by the Commissioner for examination to enable him to determine the accuracy of the facts set forth in the written application, either for initial registration or renewal thereof.

(3) Fees. — The annual fee for such registration under this section or renewal thereof shall be nineteen dollars ($19.00), plus an annual fee of six dollars ($6.00) for each set of plates. The application for registration and number plates shall be accompanied by the required annual fee. There shall be no refund of registration fee or fees for number plates in the event of suspension, revocation or voluntary cancellation of registration. There shall be no quarterly reduction in fees under this section.

(4) Issuance of Certificate. — If the Commissioner approves the application, he shall issue a registration certificate in such form as he may prescribe. A registrant shall notify

the Commissioner of any change of address of his principal place of business within 30 days after such change is made, and the Commissioner shall be authorized to cancel the registration upon failure to give such notice.

(5) Use. — Transporter number plates issued under this section may be transferred from vehicle to vehicle, but shall be used only for the limited operation of vehicles in connection with the manufacture, construction, rebuilding, or delivery of new or used truck cabs or bodies between the manufacturer, dealer, seller, or purchaser, or with the foreclosure or repossession of vehicles, or with the pickup and delivery of motor vehicles to be prepared for sale by dealers, or, if the registrant is a public utility, for the limited movement of vehicles in connection with the sale of a replaced vehicle.

(6) Suspension, Revocation or Refusal to Issue or to Renew a Registration. — The Commissioner may deny the application of any person for registration under this section and may suspend or revoke a registration or refuse to issue a renewal thereof if he determines that such applicant or registrant has:

a. Made a material false statement in his application;
b. Used or permitted the use of number plates contrary to law;
c. Been guilty of fraud or fraudulent practices; or
d. Failed to comply with any of the rules and regulations of the Commissioner for the enforcement of this section or with any provisions of this Chapter applicable thereto.

(1961, c. 360, s. 21; 1969, c. 600, s. 1; 1975, c. 222; 1979, c. 473, ss. 1, 2; c. 627, ss. 1-3; 1981, c. 727, ss. 1, 2; 1983, c. 426; 1987, c. 520.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1987 amendment, effective June 30, 1987, substituted "construction, rebuilding, or delivery of new or used truck cabs or bodies between manufacturer, dealer, seller, or purchaser" for "construction or rebuilding of truck cabs or bodies" and inserted "or the pickup and delivery of motor vehicles to be prepared for sale by dealers" in the introductory language of subsection (a), and in subdivision (a)(5) substituted "construction, rebuilding, or delivery of new or used truck cabs or bodies between the manufacturer, dealer, seller, or purchaser" for "construction or rebuilding of truck cabs or bodies" and inserted "with the pickup and delivery of motor vehicles to be prepared for sale by dealers, or."

§ 20-80. National guard plates.

(a) The Commissioner shall cause to be made each year a sufficient number of motor vehicle license plates to furnish each member of the North Carolina National Guard with one. The license plates are to be in the same form and character as the other license plates, authorized by law for use on private passenger vehicles registered in this State, except that these license plates shall bear the words "National Guard". These license plates shall be issued only to members of the North Carolina National Guard and the Commissioner shall collect fees in an amount equal to the fees collected for the licensing and registering of private vehicles not registered for

more than 4,000 pounds. The Adjutant General of North Carolina shall furnish the Commissioner annually with an estimate of the number of the distinctive plates required.

(b) The Adjutant General of North Carolina shall furnish to the Commissioner each year, prior to the date that the licenses are issued, a list of the commissioned officers of the North Carolina National Guard which shall contain the rank of each commissioned officer listed in the order of his seniority in the North Carolina National Guard and the license plates to be set aside for commissioned officer personnel shall be numbered, beginning with the number one, in numerical sequence up to and including the number 1600, according to seniority, the senior commissioned officer being issued the license bearing the numeral one.

(c) The Adjutant General of North Carolina shall furnish to the Commissioner each year, prior to the date that licenses are issued, a list of the noncommissioned officers with a rank of E7, E8, and E9 of the North Carolina National Guard which shall contain the rank of each noncommissioned officer listed in the order of his seniority in the North Carolina National Guard and the license plates to be set aside for noncommissioned officer personnel shall be numbered beginning with the number 1601 and in numerical sequence up to and including the number 3000, according to seniority, the senior noncommissioned officer being issued the license plate bearing the number 1601.

(d) Enlisted personnel with a rank of E6 or below applying for the distinctive plates shall present to the Division proof of membership in the North Carolina National Guard by means of a certificate signed by the commanding officer of the applicant on the forms prescribed by the Adjutant General of North Carolina and the Division.

(e) If a holder of the distinctive license plate is discharged from the North Carolina National Guard under other than honorable conditions, he shall exchange the distinctive plate for a standard plate within 30 days of his discharge.

(f) Retired/separated members of the North Carolina National Guard that can provide to the Division a copy of their "Notification of Eligibility for Retired Pay at Age 60" may purchase the distinctive license plate, except that plates for this category of retired/separated members shall bear the symbol "R" or the word "Retired" as shall be determined most appropriate by the Division. Fees for these retired license plates shall be the same as fees for the licensing and registering of private vehicles not registered for more than 4,000 pounds plus an additional fee of ten dollars ($10.00).

(g) The revenue derived from the additional fee for such plates shall be placed in a separate fund designated the "Retired National Guard Registration Plate Fund". After deducting the cost of the plates, plus budgetary requirements for handling an issuance, to be determined by the Commissioner of Motor Vehicles, any remaining moneys derived from the additional fee for such plate shall be periodically transferred in accordance with G.S. 20-81.3(c). (1937, c. 407, s. 44; 1941, c. 36; 1949, c. 1130, s. 7; 1955, c. 490; 1961, c. 360, s. 16; 1967, c. 700; 1973, c. 1432; 1975, c. 716, s. 5; 1985, c. 685.)

Effect of Amendments. — The 1985 amendment, effective July 11, 1985, rewrote this section.

§ 20-80.1. Military Reserve license plates.

(a) The Commissioner shall cause to be made a sufficient number of distinctive motor vehicle license plates, in the form hereafter provided, for issuance to eligible members of the reserve components of the armed forces of the United States, upon proper application and under such regulations as he deems appropriate. Upon satisfactory proof of eligibilty, the commissioner shall collect fees in accordance with G.S. 20-81.3(b) and shall disburse fees in accordance with G.S. 20-81.3(c).

(b) Military license plates shall bear the words "Army Reserve", "Navy Reserve", "Air Force Reserve", "Marine Corps Reserve", or "Coast Guard Reserve" as appropriate. The license plate shall bear the insignia of the appropriate service. The license plates shall be numbered sequentially for each service with the numbers 1 through 5000 reserved for officers, to be issued based on the date of receipt of applications by the Commission without regard to rank.

(c) When the holder of a reserve license plate becomes ineligible for it due to change in status, he shall exchange the reserve plate for standard plate within 30 days. (1983 (Reg. Sess., 1984), c. 1062, s. 5; 1985, c. 153.)

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1062, s. 8, makes this section effective July 1, 1984.

Effect of Amendments. — The 1985 amendment, effective May 3, 1985, rewrote the second sentence of subsection (b), which formerly read "The center of the license plate shall bear the insignia of the officer corps of the appropriate service for reserve officers and shall bear the insignia of the appropriate service for reserve enlisted personnel."

§ 20-81. Official license plates.

Official license plates issued to officials shall be subject to the same fees and transfer provisions as provided in G.S. 20-87 and 20-64 respectively and shall be issued as follows:

(1) Senate and Congressional. — Official license plates issued to the United States Senators shall bear the words "U.S. Senate," be numbered 1 and 2, and shall be issued on the basis of seniority. The official license plates issued to the United States Congressmen shall bear the words "U.S. House" and be numbered 1 through 11 and shall be issued on the basis of congressional districts.

(2) North Carolina General Assembly. — Official plates issued to members of the North Carolina State Senate or House of Representatives shall bear the words "Senate" or "State House" followed by the Senator's or Representative's assigned seat number.

(3) Judicial. — Official plates issued to the judiciary shall be issued as follows:

a. Appellate division. — Official plates that shall be issued upon request to the Chief Justice and Associate Justices of the Supreme Court of North Carolina and the Chief Judge and Associate Judges of North Carolina Court of Appeals shall bear the letter "J" followed by numerical designation from 1 through 19. The Chief Justice upon request shall be issued the plate bearing number 1 and the remaining plates shall first be is-

sued upon request to the Associate Justices on the basis of seniority. The Chief Judge shall be issued upon request the next such judicial plate and the remaining plates shall be issued upon request to the Associate Judges on the basis of seniority. Retired members of the Supreme Court and the Court of Appeals shall receive an official plate upon request similar in every respect to the plate issued to the regular justices and judges bearing the numerical designation of his or her position of seniority at the time of retirement except that the numerical designation shall be followed with the letter "X." Official plate J-20 may be issued upon request to the Director of the Administrative Office of the Courts.

b. Superior court. — Official plates shall be issued to the various senior resident judges of the superior court upon request and shall bear the letter "J" followed by a numerical designation equal to the sum of the numerical designation of their respective judicial districts plus 20. Where there is more than one resident judge of the superior court within a district, official plates shall upon request be issued to other resident judges serving within the district similar to the official plate to be issued upon request to the senior resident judge of the district except the numerical designation on each subsequent plate shall be followed by a letter of the alphabet beginning with the letter "A," which shall be indicative of the recipient's position as to seniority. Special judges and emergency judges of the superior court shall be issued an official plate bearing the letter "J" with a numerical designation as designated by the Administrative Office of the Courts with the approval of the Chief Justice of the Supreme Court of North Carolina. Retired judges shall be issued a similar plate except that the numerical designation shall be followed by the letter "X."

c. North Carolina district court judges. — An official plate shall be issued upon request to each chief judge of the district courts of North Carolina which shall bear the letter "J" followed by a numerical designation equal to the sum of the numerical designation of their respective judicial districts plus 100 and all other judges of the district courts serving within the same judicial district shall, upon request, be issued an official plate bearing the same letter and numerical designation as appears on the official plate issued to the chief district judge of the judicial district except that on each subsequent official plate issued within a district, the numerical designation shall be followed by a letter of the alphabet beginning with the letter "A" which shall be indicative of the recipient's position as to seniority. Retired judges shall be issued a similar plate except that the numerical designation shall be followed by the letter "X."

c1. Clerks of superior court. — Official plates shall be issued upon request to the various clerks of superior

court which plate shall bear the words "Clerk Superior Court" followed by the numerical designation of their respective counties in alphabetical order, beginning with 100 and preceded by the letter "C."

d. District attorneys. — Official plates shall be issued upon request to the various district attorneys which plates shall bear the letters "DA" followed by a numerical designation indicative of their judicial district.

e. United States judges. — Official plates shall be issued upon request to Justices of the United States Supreme Court, Judges of the United States Circuit Court of Appeals and to the District Judges of the United States District Courts residing in North Carolina and shall bear the words "U.S. Judge" followed by a numerical designation beginning with the number "1" which shall be indicative of the judge's seniority position as to the date he began continuous service as a United States Judge as designated by the Secretary of State. Retired judges and judges who have taken senior status shall be issued similar plates except that the numerical designation shall be based upon the date of such retirement or assumption of senior status and shall follow the numerical designation of active justices and judges.

f. United States attorneys. — Official plates shall be issued upon request to the United States Attorneys, which plates shall bear the letters, "U.S. Attorney," followed by a numerical designation indicative of their district, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

g. United States marshals. — Official plates shall be issued upon request to the United States Marshals, which plates shall bear the letters, "U.S. Marshal" followed by a numerical designation indicative of their district, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(4) Elective and Appointive. — Official plates issued to elective and appointive members of State government shall bear number designations beginning with number 1 which shall be assigned to the Governor of North Carolina and numbers following thereafter shall be issued to in the following order:

2. Lieutenant Governor of North Carolina.
3. Speaker of the House of Representatives.
4. President Pro Tempore of the Senate.
5. Secretary of State.
6. State Auditor.
7. State Treasurer.
8. Superintendent of Public Instruction.
9. Attorney General.
10. Commissioner of Agriculture.
11. Commissioner of Labor.
12. Commissioner of Insurance.
13. Speaker Pro Tempore of the House.
14. Legislative Services Officer.
15. Secretary of Administration.

16. Secretary of Natural Resources and Community Development.
17. Secretary of Revenue.
18. Secretary of Human Resources.
19. Secretary of Commerce.
20. Secretary of the Department of Correction.
21. Secretary of Cultural Resources.
22. Secretary of Crime Control and Public Safety.
23-29. To be reserved for and assigned to members of the Governor's staff at the direction of the Governor.
30. State Budget Officer.
31. State Personnel Director.
32-41. To be reserved for and assigned to nonlegislative members of the Advisory Budget Commission at the direction of the Governor.
42. Chairman, State Board of Education.
43. President, U.N.C. System.
44. Chairman, A.B.C. Commission.
45. Member, A.B.C. Commission.
46. Member, A.B.C. Commission.
47. Assistant Commissioner of Agriculture.
48. Assistant Commissioner of Agriculture.
49. Deputy Secretary of State.
50. Deputy State Treasurer.
51. Assistant State Treasurer.
52. Deputy Commissioner, Department of Labor.
53. Chief Deputy, Department of Insurance.
54. Assistant Commissioner of Insurance.
55-65. Shall be reserved for and assigned to the Attorney General's deputies and assistants only. Specific number assignments shall be at the direction of the Attorney General.
66-88. Shall be reserved for and assigned upon request to nonlegislative members of the Board of Economic Development. Specific number assignments to such members shall be at the direction of the Governor.
89-96. Shall be reserved for and assigned upon request to nonlegislative members of the State Ports Authority. Specific number assignments to such members shall be at the direction of the Governor.
97-104. Shall be reserved for and assigned upon request to members of the Utilities Commission. Number 97 to be upon request assigned to the Chairman of the Utilities Commission with remaining numbers to be assigned upon request to the remaining members of the Utilities Commission on the basis of seniority.
105-109. Shall be reserved for and assigned upon request to members of the Parole Commission. Number 105 to be upon request assigned to the Chairman of the Parole Commission with remaining numbers to be assigned upon request to the remaining members of the Parole Commission on the basis of seniority.
110-200. Shall be reserved for and assigned upon request to members of State boards and commissions and State employees at the direction of the Governor.

(5) Department of Transportation. — Official plates shall be issued upon request to various members of the Divisions of the Department of Transportation which shall bear the letters "DOT" followed by a number designated from 1 through 85. Specific number assignments to members of the Divisions of the Department of Transportation shall be at the direction of the Governor.

(6) Consular and Diplomatic Officials. — Official plates shall be issued upon request to an accredited consul, honorary consul, or diplomatic officer of a foreign government. The plate shall bear the letters "Consul" followed by the international alphabetical designation for the country represented by the consul or diplomatic officer and followed by a numerical designation beginning with the number "1" and followed sequentially based on the number of applicants. Every application for a registration plate under this subsection shall be accompanied by a certificate from the Secretary of State of the United States or his agent that the applicant is an accredited consul, honorary consul, or diplomatic officer.

License plates issued by the Division of Motor Vehicles of the Department of Transportation pursuant to this section shall be assessed a fee of ten dollars ($10.00), in addition to any fees charged under G.S. 20-87 and 20-88. These plates will be subject to the same transfer provisions as provided in G.S. 20-64.

The revenue derived from the additional fee for such plates shall be placed in a separate fund designated the "Officials Registration Plate Fund." After deducting the cost of the plates, plus budgetary requirements for handling an issuance, to be determined by the Commissioner of Motor Vehicles, any remaining moneys derived from the additional fee for such plate shall be periodically transferred in accordance with G.S. 20-81.3(c). (1937, c. 407, s. 45; 1961, c. 360, s. 17; 1975, cc. 432, 865; 1977, c. 762, s. 1; 1979, c. 443, ss. 1, 2; 1981, c. 240; c. 412, ss. 4, 5; 1983, c. 317; 1987, c. 545.)

Effect of Amendments. —
The 1987 amendment, effective October 1, 1987, added paragraph (3)c1.

§ 20-81.1. Special plates for amateur radio operators.

(a) Every owner of a motor vehicle who holds an unrevoked and unexpired amateur radio license of a renewable nature, issued by the Federal Communications Commission, shall, upon payment of registration and licensing fees for such vehicle as required by law and an additional initial fee of ten dollars ($10.00), be issued plates of similar size and design as the regular registration plates provided for by G.S. 20-63 or other provisions of law, upon which shall be inscribed, in lieu of the usual registration number, the official amateur radio call letters of such persons as assigned by the Federal Communications Commission. No additional fee may be required to renew a special plate issued under this section, upon proof of purchase of a portable radio unit by the vehicle owner.

(b) Application for special registration plates shall be made on forms which shall be provided by the Division of Motor Vehicles

and shall contain proof satisfactory to the Division that the applicant holds an unrevoked and unexpired official amateur radio license and shall state the call letters which have been assigned to the applicant. The special registration plates shall provide for call letters with numerical or letter suffixes so that an owner of more than one vehicle may have the call letters on each. Applications must be filed prior to 60 days before the day when regular registration plates for the year are made available to motor vehicle owners.

(c) If the amateur radio license of a person holding a special plate issued pursuant to this section shall be canceled or rescinded by the Federal Communications Commission, such person shall immediately return the special plates to the Division of Motor Vehicles and receive a regular plate at no charge. Special registration plates issued pursuant to this section shall be valid for five years and shall be renewed through the use of annual renewal stickers in the same manner as regular registration plates are renewed.

(e) Repealed by Session Laws 1985 (Regular Session, 1986), c. 961, s. 4. (1951, c. 1099; 1955, c. 291; 1961, c. 360, s. 18; 1971, c. 589, ss. 1, 2; c. 829, ss. 1, 2, 4; 1973, c. 507, s. 5; c. 1395, s. 1; 1975, c. 716, s. 5; 1977, c. 464, s. 34; 1979, c. 137, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1258, ss. 2-4; 1985 (Reg. Sess., 1986), c. 961.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective October 1, 1986, substituted "and an additional initial fee of ten dollars ($10.00)" for "and an additional fee as required by G.S. 20-81.3(b) for special personalized license plates" in the first sentence of subsection (a), added the second sentence of subsection (a), added the present second sentence of subsection (b), added the second sentence of subsection (c), and deleted subsection (e), which related to disposition of revenue derived from the additional fee for amateur radio plates.

§ 20-81.3. Special personalized registration plates.

(a) The Commissioner may promulgate rules on the issuance of special personalized registration plates to the owner of private passenger motor vehicles, private trucks, or commercial motor vehicles weighing 5,000 pounds or more gross weight, in lieu of other number plates. Such personalized registration plate shall be of such design and shall bear such letter or letters and numerals as the Commissioner shall prescribe, but there shall be no duplication of a registration plate. The Commissioner shall in his discretion refuse the issue of such letter combinations which might carry connotations offensive to good taste and decency.

(c) The revenue derived from the additional fee for the special personalized registration plates shall be placed in a separate fund designated the "Personalized Registration Plate Fund". After deducting the cost of the plates, plus budgetary requirements for handling and issuance to be determined by the Commissioner, any remaining moneys derived from the additional fee for such plates shall be transferred quarterly:

(1) Thirty-three percent (33%) to the account of the Department of Commerce to aid in financing out-of-state print and other media advertising under the program for the promotion of travel and industrial development in this State.

(2) Fifty percent (50%) to the Department of Transportation to be used solely for the purpose of beautification of highways other than those designated as interstate. These funds shall be administered by the Department of Transportation for beautification purposes not inconsistent with good landscaping and engineering principles.

(3) Seventeen percent (17%) to the account of the Department of Human Resources to promote travel accessibility for disabled persons in this State. These funds shall be used: to collect and update site information on travel attractions designated by the Department of Commerce in their publications; to provide technical assistance to travel attraction concerning accommodation of disabled tourists; and to develop, print, and promote the publication ACCESS NORTH CAROLINA. The Department of Human Resources shall make copies of ACCESS NORTH CAROLINA available to the Department of Commerce for their use in Welcome Centers and other appropriate Department of Commerce offices.

(4) The Department of Comerce shall promote ACCESS NORTH CAROLINA in their publications (including providing a toll-free telephone line and an address for requesting copies of the publication) and provide technical assistance to the Department of Human Resources on travel attractions to be included in ACCESS NORTH CAROLINA. The Department of Commerce shall forward all requests for mailing ACCESS NORTH CAROLINA to the Department of Human Resources.

(5) Funds allocated by this section for promotion of travel accessibility and ACCESS NORTH CAROLINA which are not spent and are not obligated at the end of the fiscal year shall not revert but shall be transferred to the Department of Administration for removal of man-made barriers to disabled travelers at State-funded travel attractions. Guidelines for the removal of man-made barriers shall be developed in consultation with the Department of Human Resources.

(g) The Secretary of Transportation may allocate and reserve up to one hundred thousand dollars ($100,000) to the Department of Transportation each fiscal year from the "Personalized Registration Plate Fund", before any other transfers are made pursuant to subsection (c) of this section, for the purpose of traffic control at major events as provided for by G.S. 136-44.2. Any funds allocated pursuant to this subsection that are not used or obligated shall remain in the "Personalized Registration Plate Fund" for use for the fund's other purposes. (1967, c. 413; 1971, c. 42; 1973, c. 507, s. 5; c. 1262, s. 86; 1975, c. 716, s. 5; 1977, c. 464, s. 3; c. 771, s. 4; 1979, c. 126, ss. 1, 2; 1981 (Reg. Sess., 1982), c. 1258, s. 6; 1983, c. 848; 1985, c. 766; 1987, c. 252; c. 738, s. 140; c. 830, ss. 113(a), 116(a)-(c).)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1987, c. 738, s. 1.1 provides that c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 830, s. 1.1 provides that c. 830 shall be known as "The State Aid For Nonstate Agencies Act of 1987."

Session Laws 1987, c. 830, s. 114 provides: "All funds in excess of one hundred thousand dollars ($100,000) that

are currently being held by the Department of Transportation pursuant to G.S. 20-81.3(c)(5) shall be transferred to the Department of Commerce to implement G.S. 20-81.3(c)(1)."

Session Laws 1987, c. 830, s. 116(d) provides: "Funds not obligated by the Department of Commerce from the Personalized Registration Plate Fund designated to promote travel accessibility for disabled persons as of June 30, 1987, shall be transferred to the Department of Administration and shall be used for removal of man-made barriers to disabled travelers at State-funded travel attractions."

Session Laws 1987, c. 738, s. 237 and c. 830, s. 121 are severability clauses.

Effect of Amendments. —

The 1985 amendment, effective July 15, 1985, rewrote subsection (c).

Session Laws 1987, c. 252, effective June 2, 1987, rewrote the first sentence of subsection (a), which read "The Commissioner may issue under such regulations as he shall deem appropriate a special personalized registration plate to the owner of a private passenger motor vehicle or public truck in lieu of another number plate."

Session Laws 1987, c. 738, s. 140, effective August 13, 1987, inserted "print and other media" in subdivision (c)(1).

Session Laws 1987, c. 830, s. 113(a), effective July 1, 1987, added subsection (g).

Session Laws 1987, c. 830, s. 116(a)-(c), effective July 1, 1987, rewrote subdivision (c)(3), (c)(4), and (c)(5).

§ 20-81.4. Free registration plates to disabled veterans, former prisoners of war, and Congressional Medal of Honor recipients.

(a) From and after January 1, 1970, the North Carolina Division of Motor Vehicles shall provide and issue free of charge to each disabled veteran in this State registration and registration plates and/or validation stickers for either one automobile or one pickup truck, where a pickup truck is the disabled veteran's only mode of transportation and is not used for hire, a disabled veteran being, for the purpose of this section, a veteran of World War I, World War II or Korean service or Vietnam service, or as a result of international terrorist activities having served in the armed forces of the United States, who is a resident of North Carolina and who is entitled to compensation under the laws administered by the Veterans Administration and who is rated as one hundred percent (100%) service-connected disabled or has suffered one or more of the following due to disability incurred in or aggravated by active duty in the armed forces of the United States during one or more conflicts:

(1) Loss or permanent loss of use of one or both feet;

(2) Loss or permanent loss of use of one or both hands;

(3) Permanent impairment of vision of both eyes of the following status: Central visual acuity of 20/200 or less in the better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees in the better eye.

(a1) Form and after January 1, 1979, the North Carolina Division of Motor Vehicles, upon request by an ex-prisoner of war residing in this State, shall provide and issue free of charge to such ex-prisoner of war registration and special prisoner of war registration plates for either one automobile or one pickup truck, where a

pickup truck is the ex-prisoner of war's only mode of transportation and is not used for hire; an ex-prisoner of war being, for the purpose of this subsection, an American service person captured and held prisoner by forces hostile to the United States while serving in the armed forces of the United States in World War I, World War II, Korean service or Vietnam service. The widows of the ex-prisoners of war may renew, and the Division may reissue without charge, the plates issued pursuant to this subsection until the widow either remarries or fails to renew the registration plate.

(a2) From and after January 1, 1986, the Division, upon request by a recipient of the Congressional Medal of Honor residing in this State, shall provide and issue to that person a special Congressional Medal of Honor registration and registration plates and/or validation stickers for either one automobile or one pickup truck, where the truck is not used for hire.

(c2) The registration plate and/or validation stickers provided for by this section for recipients of the Congressional Medal of Honor shall be issued free of charge and only upon proof as may be required by the Division as to the recipient's status and proof of financial responsibility as required by the motor vehicle laws of North Carolina.

(e) A disabled veteran who is rated as less than one hundred percent (100%) service-connected disabled may, upon the payment of registration and license fees for a private motor vehicle or pickup truck not exceeding a gross weight of 4,000 pounds owned by him, and an additional fee of ten dollars ($10.00), obtain a registration plate provided for in subsection (d) of this section. The registration plate provided for by this subsection shall be issued to disabled veterans only upon proof of disabled status as evidenced by receipt of a federal military disability pension or possession of an identification card showing eligibility for medical treatment by the Veterans Administration due to a service-connected disability. (1969, c. 461; 1975, cc. 221, 584; c. 716, s. 5; 1977, c. 227; 1979, 2nd Sess., c. 1191; 1981 (Reg. Sess., 1982), c. 1258, ss. 7-9; 1985, c. 315; c. 657, ss. 1, 2; c. 699, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

Session Laws 1985, c. 315, effective June 3, 1985, added the last sentence of subsection (a1).

Session Laws 1985, c. 657, ss. 1, 2, effective January 1, 1986, inserted "or as a result of international terrorist activities", substituted "armed forces" for "military, naval, marines or air services" following "having served in the," and substituted "duty in the armed forces" for "military, naval, marine or air service" following "or aggravated by active," all in subsection (a), and added subsection (e).

Session Laws 1985, c. 699, ss. 1, 2, effective July 11, 1985, rewrote the catchline to this section and added subsections (a2) and (c2).

§ 20-81.9. Special plates for members of the United States Coast Guard Auxiliary.

(a) Every owner of a private passenger motor vehicle or pickup truck not exceeding a gross weight of 4,000 pounds, who is an active member of the United States Coast Guard Auxiliary, upon the payment of registration and licensing fees for such vehicle as required by law and an additional fee of ten dollars ($10.00), shall be issued

license plates of the same form and character as other license plates now or hereinafter authorized by law to be issued upon such vehicles except that such license plates shall in addition bear on the face thereof the following words: "U.S. Coast Guard Auxiliary".

(b) Application for special registration plates pursuant to this section shall be made on forms provided by the Division of Motor Vehicles and shall contain proof satisfactory to the Division that the applicant is an active member of the United States Coast Guard Auxiliary. Applications must be filed prior to 60 days before the day when regular registration plates for the year are made available to motor vehicle owners.

(c) When the holder of a license plate issued pursuant to this section becomes ineligible for it due to change in status, he shall exchange the specialized plate for a standard plate within 30 days.

(d) The revenue derived from the additional fee for such plates shall be placed in a separate fund designated the "United States Coast Guard Auxiliary Plate Fund". After deducting the cost of the plates, plus budgetary requirements for handling and issuance, to be determined by the Commissioner of Motor Vehicles, any remaining moneys derived from the additional fee for such plates shall be periodically transferred in accordance with G.S. 20-81.3(c). (1987, c. 240, s. 1.)

Editor's Note. — Session Laws 1987, c. 240, s. 2 makes this section effective October 1, 1987.

§ 20-81.10. Pearl Harbor survivor plates.

(a) The Commissioner shall cause to be made a sufficient number of distinctive motor vehicle license plates for issuance to eligible persons who make application on a form designated by the Division and supply documentation that they were members of the U.S. Military Service and were present at the attack on Pearl Harbor and that are survivors of the attack on Pearl Harbor on December 7, 1941. Upon satisfactory proof of eligibility, the Commissioner shall collect fees in accordance with G.S. 20-81.3(b) and shall disburse fees in accordance with G.S. 20-81.3(c).

(b) The distinctive plates required by subsection (a) of this section shall bear the words "Pearl Harbor Survivor" on the left side of the plate and shall also bear the insignia of the Pearl Harbor Survivors' Association. The license plates shall be numbered sequentially beginning with the number 001. These license plates shall be issued based on the date of receipt of the applications by the Division. (1987, c. 378, s. 1.)

Editor's Note. — Session Laws 1987, c. 378, s. 2 makes this section effective October 1, 1987.

Part 6. Vehicles of Nonresidents of State, etc.

§ 20-84. Vehicles owned by State, municipalities or orphanages, etc.; certain vehicles operated by the local chapters of American National Red Cross.

Editor's Note. —

Session Laws 1987, c. 830, s. 76, provides: "(a) Pursuant to the provisions of G.S. 14-250, for the 1987-89 fiscal biennium, the General Assembly authorizes the use of private license tags on State-owned motor vehicles only for the State Highway Patrol and for the following:

Department—Exemption Category	Number
Motor Vehicles — License and Theft	97
Justice — SBI Agents	277
Correction — Probation/Parole Surveillance Officers (intensive probation)	25

"(b) Except as provided in this section, all State-owned motor vehicles shall bear permanent registration plates issued under G.S. 20-84."

Part 7. Title and Registration Fees.

§ 20-87. Passenger vehicle registration fees.

These shall be paid to the Division annually, as of the first day of January, for the registration and licensing of passenger vehicles, fees according to the following classifications and schedules:

(1) Common Carrier, Contract Carriers and Exempt For-Hire Passenger Carrier Vehicles. — For-hire passenger vehicles shall be taxed at the rate of seventy-eight dollars ($78.00) per year for each vehicle of fifteen-passenger capacity or less and vehicles of over fifteen-passenger capacity shall be classified as buses and shall be taxed at a rate of one dollar and forty cents ($1.40) per hundred pounds of empty weight per year for each vehicle; provided, however, no license shall be issued for the operation of any taxicab until the governing body of the city or town in which such taxicab is principally operated, if the principal operation is in a city or town, has issued a certificate showing:

a. That the operator of such taxicab has provided liability insurance or other form of indemnity for injury to person or damage to property resulting from the operation of such taxicab, in such amount as required by the city or town, and

b. That the convenience and necessity of the public requires the operation of such taxicab.

All persons operating taxicabs on January 1, 1945, shall be entitled to a certificate of necessity and convenience for the number of taxicabs operated by them on such date, unless since said date the license of such person or persons to operate a taxicab or taxicabs has been revoked or their right to operate has been withdrawn or revoked; provided that all persons operating taxicabs in Edgecombe, Lee,

Nash and Union Counties on January 1, 1945, shall be entitled to certificates of necessity and convenience only with the approval of the governing authority of the town or city involved.

A taxicab shall be defined as any motor vehicle, seating nine or fewer passengers, operated upon any street or highway on call or demand, accepting or soliciting passengers indiscriminately for hire between such points along streets or highways as may be directed by the passenger or passengers so being transported, and shall not include motor vehicles or motor vehicle carriers as defined in Article 17 of this Chapter. Such taxicab shall not be construed to be a common carrier nor its operator a public service corporation.

(2) U-Drive-It Passenger Vehicles. — U-drive-it passenger vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00

Automobiles: Forty-one dollars ($41.00) per year for each vehicle of fifteen-passenger capacity or less, and vehicles of over fifteen-passenger capacity shall be classified as buses and shall pay one dollar and forty cents ($1.40) per hundred pounds empty weight of each vehicle.

(5) Private Passenger Vehicles. — There shall be paid to the Division annually, as of the first day of January, for the registration and licensing of private passenger vehicles, fees according to the following classifications and schedules:

Private passenger vehicles of not more than fifteen passengers $20.00

Private passenger vehicles over fifteen passengers .. 23.00

Provided, that a fee of only one dollar ($1.00) shall be charged for any vehicle given by the federal government to any veteran on account of any disability suffered during war so long as such vehicle is owned by the original donee or other veteran entitled to receive such gift under Title 38, section 252, United States Code Annotated.

(1937, c. 407, s. 51; 1939, c. 275; 1943, c. 648; 1945, c. 564, s. 1; c. 576, s. 2; 1947, c. 220, s. 3; c. 1019, ss. 1-3; 1949, c. 127; 1951, c. 819, ss. 1, 2; 1953, c. 478; c. 826, s. 4; 1955, c. 1313, s. 2; 1957, c. 1340, s. 3; 1961, c. 1172, s. 1a; 1965, c. 927; 1967, c. 1136; 1969, c. 600, ss. 3-11; 1971, c. 952; 1973, c. 107; 1975, c. 716, s. 5; 1981, c. 976, ss. 1-4; 1981 (Reg. Sess., 1982), c. 1255; 1983, c. 713, s. 61; c. 761, ss. 142, 143, 145; 1985, c. 454, s. 2; 1987, c. 333.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. —

The 1985 amendment, effective June 24, 1985, substituted "fifteen-passenger" for "nine-passenger" in two places in the first paragraph of subdivision (1) and substituted "Article 17 of this Chapter" for "G.S. 62-259 through G.S. 62-281" in the last paragraph of subdivision (1).

The 1987 amendment, effective June 10, 1987, substituted "fifteen-passenger" for "nine-passenger" in two places in subdivision (2), and substituted "fifteen passengers" for "nine passengers" in two places in subdivision (5).

§ 20-88.02. Registration of logging vehicles.

Upon receipt of an application on a form prescribed by it, the Division shall register trucks, tractor trucks, trailers, and semitrailers used exclusively in connection with logging operations in a separate category. For the purposes of this section, "logging" shall mean the harvesting of timber and transportation from a forested site to places of sale.

Fees for the registration of vehicles under this section shall be the same as those ordinarily charged for the type of vehicle being registered. (1985, c. 458, s. 1.)

Editor's Note. — Session Laws 1985, c. 458, s. 2 makes this section effective October 1, 1985.

§ 20-88.1. Driver training and safety education.

(c) All expenses incurred by the State in carrying out the provisions of this section shall be paid out of the General Fund. (1957, c. 682, s. 1; 1965, c. 410, s. 1; 1975, c. 431; c. 716, s. 5; 1977, c. 340, s. 4; c. 1002; 1983, c. 761, s. 141; 1985 (Reg. Sess., 1986), c. 982, s. 25.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1987, c. 524, s. 2 provides: "Notwithstanding G.S. 20-88.1(c), expenses incurred in carrying out the provisions of G.S. 20-88.1 from the beginning of the 1987-88 fiscal year until the ratification of the Current Operations Appropriations Act shall be paid out of the Highway Fund, provided that upon ratification of that act, the General Fund shall reimburse the Highway Fund for such expenditures."

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1987, added subsection (c).

§ 20-96. Overloading.

It is the intent of this section that every owner of a motor vehicle shall procure license in advance to cover the empty weight and maximum load which may be carried. Any owner failing to do so, and whose vehicle shall be found in operation on the highway over the weight for which such vehicle is licensed, shall pay the penalties prescribed in G.S. 20-118(e)(3). Nonresidents operating under the provisions of G.S. 20-83 shall be subject to the additional tax provided in this section when their vehicles are operated in excess of the licensed weight or, regardless of the licensed weight, in excess of the maximum weight provided for in G.S. 20-118. Any resident or nonresident owner of a vehicle that is found in operation on a highway designated by the Board of Transportation as a light traffic highway, and along which signs are posted showing the maximum legal weight on said highway with a load in excess of the weight posted for said highway, shall be subject to the penalties provided in G.S. 20-118(e)(1). Any person who shall willfully violate the provisions of this section shall be guilty of a misdemeanor in addition to being liable for the additional tax herein prescribed.

Any peace officer who discovers a property-hauling vehicle being operated on the highways with an overload as described in this section or which is equipped with improper registration plates, or

the owner of which is liable for any overload penalties or assessments applicable to the vehicle and due and unpaid for more than 30 days, is hereby authorized to seize said property-hauling vehicle and hold the same until the overload has been removed or proper registration plates therefor have been secured and attached thereto and the penalties owed under this section and G.S. 20-118.3 have been paid. Any peace officer seizing a property-hauling vehicle under this provision, may, when necessary, store said vehicle and the owner thereof shall be responsible for all reasonable storage charges thereon. When any property-hauling vehicle is seized, held, unloaded or partially unloaded under this provision, the load or any part thereof shall be cared for by the owner or operator of the vehicle without any liability on the part of the officer or of the State or any municipality because of damage to or loss of such load or any part thereof. (1937, c. 407, s. 60; 1943, c. 726; 1949, c. 583, s. 8; c. 1207, s. 4½; c. 1253; 1951, c. 1013, ss. 1-3; 1953, c. 694, ss. 2, 3; 1955, c. 554, s. 9; 1957, c. 65, s. 11; 1959, c. 1264, s. 5; 1973, c. 507, s. 5; 1985, c. 116, ss. 1-3.)

Effect of Amendments. — The 1985 amendment, effective April 23, 1985, substituted "G.S. 20-118(e)(3)" for "G.S. 20-118" at the end of the second sentence of the first paragraph, substituted "G.S. 20-118(e)(1)" for "G.S. 20-118" at the end of the fourth sentence of the first paragraph, and substituted "penalties owed under this section and G.S. 20-118.3 have been paid" for "overloading penalty provided in this section and G.S. 20-118 has been paid" at the end of the first sentence of the second paragraph.

CASE NOTES

Invalid Penalty. — Where the DMV assessed a penalty for operating a vehicle on the highways with a gross weight in excess of that allowed under the license obtained pursuant to this section, but not in excess of the maximum axle weight limits, and such penalty was not authorized by § 20-118, such penalty violated Const., Art. IV, §§ 1 and 3, since there was no reasonable necessity for conferring absolute judicial discretion in the DMV. Young's Sheet Metal & Roofing, Inc. v. Wilkins, 77 N.C. App. 180, 334 S.E.2d 419 (1985), decided prior to the 1985 amendment to this section.

§ 20-97. Taxes compensatory; no additional tax.

Local Modification. — Caswell: 1987, c. 334; City of Charlotte: 1985 (Reg. Sess., 1986), c. 1009; City of Oxford and Town of Creedmoor: 1987, c. 610; Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill, and Pineville: 1985 (Reg. Sess., 1986), c. 1009.

§ 20-101. For-hire vehicles to be marked.

All motor vehicles licensed as common carriers or contract carriers of passengers or property, exempt for-hire motor carriers, and for-hire passenger-carrying motor carriers of greater than fifteen-passenger capacity shall have printed on each side of the vehicle in letters not less than three inches in height the name and home address of the owner, the certificate number, permit number, or exemption number under which said vehicle is operated, and such other identification as may be required and approved by the Utilities Commission. (1937, c. 407, s. 65; 1951, c. 819, s. 1; 1967, c. 1132; 1985, c. 132.)

Effect of Amendments. — The 1985 amendment, effective October 1, 1985, substituted a comma for "and all" preceding "exempt for-hire motor carriers" and inserted "and for-hire passenger-carrying motor carriers of greater than fifteen-passenger capacity" thereafter.

Part 8. Anti-Theft and Enforcement Provisions.

§ 20-106. Receiving or transferring stolen vehicles.

CASE NOTES

No Felonious Intent, etc. — Because the purpose of this section is to discourage the possession of stolen vehicles the State need only prove that the defendant knew or had reason to believe that the vehicle in his possession was stolen. No felonious intent is required. State v. Baker, 65 N.C. App. 430, 310 S.E.2d 101 (1983), cert. denied, 312 N.C. 85, 321 S.E.2d 900 (1984).

Applied in State v. Craver, 70 N.C. App. 555, 320 S.E.2d 431 (1984).

§ 20-106.1. Fraud in connection with rental of motor vehicles.

CASE NOTES

Cited in Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985); Nationwide Mut. Ins. Co. v. Land, 318 N.C. 551, 350 S.E.2d 500 (1986).

§ 20-108. Vehicles or component parts of vehicles without manufacturer's numbers.

(a) Any person who knowingly buys, receives, disposes of, sells, offers for sale, conceals, or has in his possession any motor vehicle, or engine or transmission or component part which has been stolen or removed from a motor vehicle and from which the manufacturer's serial or engine number or other distinguishing number or identification mark or number placed thereon under assignment from the Division has been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of said motor vehicle or engine or transmission or component part is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than one thousand dollars ($1,000) or up to six months imprisonment, or both, in the discretion of the court.

(b) The Commissioner and such officers and inspectors of the Division of Motor Vehicles as he has designated may take and possess any motor vehicle or component part if its engine number, vehicle identification number, or manufacturer's serial number has been altered, changed, or obliterated or if such officer has probable cause to believe that the driver or person in charge of the motor vehicle or component part has violated subsection (a) above. Any officer who so takes possession of a motor vehicle or component part shall immediately notify the Division of Motor Vehicles and the rightful owner, if known. The notification shall contain a description of the motor vehicle or component part and any other facts that may assist in locating or establishing the rightful ownership

thereof or in prosecuting any person for a violation of the provisions of this Article.

(c) Within 15 days after seizure of a motor vehicle or component part pursuant to this section, the Division shall send notice by certified mail to the person from whom the property was seized and to all claimants to the property whose interest or title is in the registration records in the Division of Motor Vehicles that the Division has taken custody of the motor vehicle or component part. The notice shall also contain the following information:

(1) The name and address of the person or persons from whom the motor vehicle or component part was seized;

(2) A statement that the motor vehicle or component part has been seized for investigation as provided in this section and that the motor vehicle or component part will be released to the rightful owner:

a. Upon a determination that the identification number has not been altered, changed, or obliterated; or

b. Upon presentation of satisfactory evidence of the ownership of the motor vehicle or component part if no other person claims an interest in it within 30 days of the date the notice is mailed. Otherwise, a hearing regarding the disposition of the motor vehicle or component part may take place in a court having jurisdiction.

(3) The name and address of the officer to whom evidence of ownership of the motor vehicle or component part may be presented; and

(4) A copy statement of the text contained in this section.

(d) Whenever a motor vehicle or component part comes into the custody of an officer, the Division of Motor Vehicles may commence a civil action in the District Court in the county in which the motor vehicle or component part was seized to determine whether the motor vehicle or component part should be destroyed, sold, converted to the use of the Division or otherwise disposed of by an order of the court. The Division shall give notice of the commencement of such an action to the person from whom the motor vehicle or component part was seized and all claimants to the property whose interest or title is in the registration records of the Division of Motor Vehicles. Notice shall be by certified mail sent within 10 days after the filing of the action. In addition, any possessor of a motor vehicle or component part described in this section may commence a civil action under the provisions of this section, to which the Division of Motor Vehicles may be made a party, to provide for the proper disposition of the motor vehicle or component part.

(e) Nothing in this section shall preclude the Division of Motor Vehicles from returning a seized motor vehicle or component part to the owner following presentation of satisfactory evidence of ownership, and, if determined necessary, requiring the owner to obtain an assignment of an identification number for the motor vehicle or component part from the Division of Motor Vehicles.

(f) No court order providing for disposition shall be issued unless the person from whom the motor vehicle or component was seized and all claimants to the property whose interest or title is in the registration records in the Division of Motor Vehicles are provided a postseizure hearing by the court having jurisdiction. Ten days' notice of the postseizure hearing shall be given by certified mail to the person from whom the motor vehicle was seized and all claim-

ants to the property whose interest or title is in the registration records in the Division of Motor Vehicles. If such motor vehicle or component part has been held or identified as evidence in a pending civil or criminal action or proceeding, no final disposition of such motor vehicle or component part shall be ordered without prior notice to the parties in said proceeding.

(g) At a hearing held pursuant to any action filed by the Division to determine the disposition of any motor vehicle or component part seized pursuant to this section, the court shall consider the following:

(1) If the evidence reveals either that the motor vehicle or component part identification number has not been altered, changed or obliterated or that the identification number has been altered, changed, or obliterated but satisfactory evidence of ownership has been presented, the motor vehicle or component part shall be returned to the person entitled to it. If ownership cannot be established, nothing in this section shall preclude the return of said motor vehicle or component part to a good faith purchaser following the presentation of satisfactory evidence of ownership thereof and, if necessary, upon the good faith purchaser's obtaining an assigned number from the Division of Motor Vehicles and posting a reasonable bond for a period of three years. The amount of the bond shall be set by the court.

(2) If the evidence reveals that the motor vehicle or component part identification number has been altered, changed, or obliterated and satisfactory evidence of ownership has not been presented, the motor vehicle or component part shall be destroyed, sold, converted to the use of the Division of Motor Vehicles or otherwise disposed of, as provided for by order of the court.

(h) At the hearing, the Division shall have the burden of establishing, by a preponderance of the evidence, that the motor vehicle or component part has been stolen or that its identification number has been altered, changed, or obliterated.

(i) At the hearing any claimant to the motor vehicle or component part shall have the burden of providing satisfactory evidence of ownership.

(j) An officer taking into custody a motor vehicle or component part under the provisions of this section is authorized to obtain necessary removal and storage services, but shall incur no personal liability for such services. The person or company so employed shall be entitled to reasonable compensation as a claimant under (e), and shall not be deemed an unlawful possessor under (a). (1937, c. 407, s. 72; 1965, c. 621, s. 2; 1973, c. 1149, ss. 1, 2; 1975, c. 716, s. 5; 1983, c. 592; 1985, c. 764, s. 22.)

Editor's Note. — Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense.

Effect of Amendments. —

The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, inserted "up to six months" near the end of subsection (a).

§ 20-109. Altering or changing engine or other numbers.

(a) It shall be unlawful and constitute a felony for:

(1) Any person to willfully deface, destroy, remove, cover, or alter the manufacturer's serial number, transmission number, or engine number; or

(2) Any vehicle owner to knowingly permit the defacing, removal, destroying, covering, or alteration of the serial number, transmission number, or engine number; or

(3) Any person except a licensed vehicle manufacturer as authorized by law to place or stamp any serial number, transmission number, or engine number upon a vehicle, other than one assigned thereto by the Division; or

(4) Any vehicle owner to knowingly permit the placing or stamping of any serial number or motor number upon a motor vehicle, except such numbers as assigned thereto by the Division.

A violation of this subsection shall be punishable as a Class J felony.

(1937, c. 407, s. 73; 1943, c. 726; 1953, c. 216; 1965, c. 621, s. 3; 1967, c. 449; 1973, c. 1089; 1975, c. 716, s. 5; 1979, c. 760, s. 5; 1987, c. 512.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective June 29, 1987, substituted "felony" for "misdemeanor" in the introductory language of subsection (a) and substituted "as a Class J felony" for "by a fine or imprisonment not to exceed two years, or both, in the discretion of the court" in the last paragraph of subsection (a).

§ 20-111. Violation of registration provisions.

CASE NOTES

Cited in State v. Scott, 71 N.C. App. 570, 322 S.E.2d 613 (1984).

§ 20-112. Making false affidavit perjury.

CASE NOTES

The crime of perjury requires, among other things, that a false statement under oath be knowingly made. State v. Baker, 65 N.C. App. 430, 310 S.E.2d 101 (1983), cert. denied, 312 N.C. 85, 321 S.E.2d 900 (1984).

§ 20-114. Duty of officers; manner of enforcement.

(c) It shall also be the duty of every sheriff of every county of the State and of every police or peace officer of the State to make immediate report to the Commissioner of all motor vehicles reported to him as abandoned or that are seized by him for being used for illegal transportation of alcoholic beverages or other unlawful purposes, and no motor vehicle shall be sold by any sheriff, police or peace officer, or by any person, firm or corporation claiming a me-

chanic's or storage lien, or under judicial proceedings, until notice on a form approved by the Commissioner shall have been given the Commissioner at least 20 days before the date of such sale. (1937, c. 407, s. 78; 1943, c. 726; 1967, c. 862; 1971, c. 528, s. 13; 1981, c. 412, s. 4; c. 747, s. 66.)

Only Part of Section Set Out. — As the rest of the section was not affected, it is not set out.

Editor's Note. — Subsection (c) of this section is set out above in order to substitute "alcoholic beverages" for "intoxicating liquors." See Session Laws 1981, c. 412, s. 4; c. 747, s. 66.

§ 20-114.1. Willful failure to obey law-enforcement or traffic-control officer; firemen as traffic-control officers; appointment, etc., of traffic-control officers.

(b) In addition to other law enforcement or traffic control officers, uniformed regular and volunteer firemen and uniformed regular and volunteer members of a rescue squad may direct traffic and enforce traffic laws and ordinances at the scene of or in connection with fires, accidents, or other hazards in connection with their duties as firemen or rescue squad members. Except as herein provided, firemen and members of rescue squads shall not be considered law enforcement or traffic control officers.

(b1) Any member of a rural volunteer fire department or volunteer rescue squad who receives no compensation for services shall not be liable in civil damages for any acts or omissions relating to the direction of traffic or enforcement of traffic laws or ordinances at the scene of or in connection with a fire, accident, or other hazard unless such acts or omissions amount to gross negligence, wanton conduct, or intentional wrongdoing.

(1961, c. 879; 1969, c. 59; 1983, c. 483, ss. 1-3; 1987, c. 146, ss. 1, 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. —

Session Laws 1985, c. 591, repeals Session Laws 1983, c. 483, s. 4, quoted in the main volume, which had exempted certain counties and municipalities from the provisions of the 1983 Act.

Effect of Amendments. —

The 1987 amendment, effective May 7, 1987, rewrote subsection (b) and added subsection (b1).

Part 9. The Size, Weight, Construction and Equipment of Vehicles.

§ 20-115. Scope and effect of regulations in this title.

It shall be unlawful for any person to drive or move or for the owner to cause or knowingly permit to be driven or moved on any highway any vehicle or vehicles of a size or weight exceeding the limitations stated in this title, or any vehicle or vehicles which are not so constructed or equipped as required in this title, or the rules and regulations of the Department of Transportation adopted pur-

suant thereto and the maximum size and weight of vehicles herein specified shall be lawful throughout this State, and local authorities shall have no power or authority to alter said limitations except as express authority may be granted in this Article. (1937, c. 407, s. 79; 1973, c. 507, s. 5; 1977, c. 464, s. 34; 1985 (Reg. Sess., 1986), c. 852, s. 8.)

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective September 1, 1986, deleted "and constitute a misdemeanor" following "It shall be unlawful" at the beginning of the section.

§ 20-115.1. Limitations on tandem trailers and semitrailers on certain North Carolina highways.

(a) Motor vehicle combinations consisting of a truck tractor and two trailing units may be operated in North Carolina only on highways of the interstate system (except those exempted by the United States Secretary of Transportation pursuant to 49 USC 2311(i)) and on those sections of the federal-aid primary system designated by the United States Secretary of Transportation. No trailer or semitrailer operated in this combination shall exceed 28 feet in length; Provided, however, a 1982 or older year model trailer or semitrailer of up to 28½ feet in length may operate in a combination permitted by this section for trailers or semitrailers which are 28 feet in length.

(b) Motor vehicle combinations consisting of a semitrailer of not more than 48 feet in length and a truck tractor may be operated on the interstate highways (except those exempted by the United States Secretary of Transportation pursuant to 49 USC 2311(i)) and federal-aid primary system highways designated by the United States Secretary of Transportation.

(c) Motor vehicles with a width not exceeding 102 inches may be operated on the interstate highways (except those exempted by the United States Secretary of Transportation pursuant to 49 USC 2316(e)) and other qualifying federal-aid highways designated by the United States Secretary of Transportation, with traffic lanes designed to be a width of 12 feet or more and any other qualifying federal-aid primary system highway designated by the United States Secretary of Transportation if the Secretary has determined that the designation is consistent with highway safety.

(d) Notwithstanding the provisions of subsections (a) and (b) of this section which limit the length of trailers which may be used in motor vehicle combinations in this State on highways of the interstate system (except those exempted by the United States Secretary of Transportation pursuant to 49 USC 2311(i)) and on those sections of the federal-aid primary system designated by the United States Secretary of Transportation, there is no limitation of the length of the truck tractor which may be used in motor vehicle combinations on these highways and therefore, in compliance with Section 411(b) of the Surface Transportation Act of 1982, there is no overall length limitation for motor vehicle combinations regulated by this section.

(f) Motor vehicle combinations operating pursuant to this section shall have reasonable access between (i) highways on the interstate

system (except those exempted by the United States Secretary of Transportation pursuant to 49 USC 2311(i) and 49 USC 2316(e)) and other qualifying federal-aid highways as designated by the United States Secretary of Transportation and (ii) terminals, facilities for food, fuel, repairs, and rest and points of loading and unloading by household goods carriers and by any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28½ feet and a width not to exceed 102 inches as provided in subsection (c) of this section and which generally operates as part of a vehicle combination described in subsection (a) of this section. The North Carolina Department of Transportation may, on streets and highways on the State highway system, and any municipality may, on streets and highways on the municipal street system, impose reasonable restrictions based on safety considerations on any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28½ feet and which generally operates as part of a vehicle combination described in subsection (a) of this section. "Reasonable access" to facilities for food, fuel, repairs and rest shall be deemed to be those facilities which are located within three road miles of the interstate or designated highway. The Department of Transportation is authorized to promulgate rules and regulations providing for "reasonable access."

(g) Under certain conditions, and after consultation with the Joint Legislative Commission on Governmental Operations, the North Carolina Department of Transportation may designate State highway system roads in addition to those highways designated by the United States Secretary of Transportation for use by the vehicle combinations authorized in this section. Such designations by the Department shall only be made under the following conditions:

(1) A determination of the public convenience and need for such designation;

(2) A traffic engineering study which clearly shows the road proposed to be designated can safely accommodate and has sufficient capacity to handle these vehicle combinations; and

(3) A public hearing is held or the opportunity for a public hearing is provided in each county through which the designated highway passes, after two weeks notice posted at the courthouse and published in a newspaper of general circulation in each county through which the designated State highway system road passes, and consideration is given to the comments received prior to the designation.

No portion of the State highway system within municipal corporate limits may be designated by the Department without concurrence by the municipal governing body. Also, the Department may not designate any portion of the State highway system that has been deleted or exempted by the United States Secretary of Transportation based on safety considerations. For the purpose of this section, any highway designated by the Department shall be deemed to be the same as a federal-aid primary highway designated by the United States Secretary of Transportation pursuant to 49 USC 2311 and 49 USC 2316, and the vehicle combinations authorized in this section shall be permitted to operate on such highway. (1983, c. 898, s. 1; 1985, c. 423, ss. 1-7.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective June 19, 1985, inserted "(except those exempted by the United States Secretary of Transportation pursuant to 49 USC 2311(i))" in subsections (a), (b) and (d), substituted "permitted by this section for trailers or semitrailers which are 28 feet in length" for "within a sixty-five (65) foot overall length" at the end of the second sentence of subsection (a), inserted "primary system" near the end of subsection (b), rewrote subsection (c), substituted the present first and second sentences of subsection (f) for the former first sentence thereof, and added subsection (g).

§ 20-116. Size of vehicles and loads.

(e) Except as provided by G.S. 20-115.1, no combination of vehicles coupled together shall consist of more than two units and no such combination of vehicles shall exceed a total length of 60 feet inclusive of front and rear bumpers, subject to the following exceptions: Said length limitation shall not apply to vehicles operated in the daytime when transporting poles, pipe, machinery or other objects of a structural nature which cannot readily be dismembered, nor to such vehicles transporting such objects operated at nighttime by a public utility when required for emergency repair of public service facilities or properties, but in respect to such night transportation every such vehicle and the load thereon shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps upon the extreme ends of said projecting load to clearly mark the dimensions of such load: Provided that vehicles designed and used exclusively for the transportation of motor vehicles shall be permitted an overhang tolerance front or rear not to exceed five feet. Provided, that wreckers in an emergency may tow a combination tractor and trailer to the nearest feasible point for repair and/or storage: Provided, however, that a combination of a house trailer used as a mobile home, together with its towing vehicle, shall not exceed a total length of 55 feet exclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to trailers not exceeding three in number drawn by a motor vehicle used by municipalities for the removal of domestic and commercial refuse and street rubbish, but such combination of vehicles shall not exceed a total length of 50 feet inclusive of front and rear bumpers. Provided further, that the said limitation that no combination of vehicles coupled together shall consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a driveway service when no more than three saddle mounts are used and provided further, that equipment used in said combination is approved by the safety regulations of the Interstate Commerce Commission and the safety regulations of the North Carolina Division of Motor Vehicles and the Department of Transportation.

(1937, c. 246; c. 407, s. 80; 1943, c. 213, s. 1; 1945, c. 242, s. 1; 1947, c. 844; 1951, c. 495, s. 1; c. 733; 1953, cc. 682, 1107; 1955, c. 296, s. 2; c. 729; 1957, c. 65, s. 11; cc. 493, 1183, 1190; 1959, c. 559; 1963, c. 356, s. 1; c. 610, ss. 1, 2; c. 702, s. 4; c. 1027, s. 1; 1965, c. 471; 1967, c. 24, s. 4; c. 710; 1969, cc. 128, 880; 1971, cc. 128, 680, 688, 1079; 1973, c. 507, s. 5; c. 546; c. 1330, s. 39; 1975, c. 148, ss.

1-5; c. 716, s. 5; 1977, c. 464, s. 34; 1979, cc. 21, 218; 1981, c. 169, s. 1; 1983, c. 724, s. 2; 1985, c. 587; 1987, c. 272.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Local Modification. — Dare: 1985 (Reg. Sess., 1986), c. 964.

Effect of Amendments. —

The 1985 amendment, effective July 4, 1985, inserted "Except as provided by G.S. 20-115.1" at the beginning of subsection (e) and substituted "60 feet" for "55 feet" in the first sentence of that subsection.

The 1987 amendment, effective July 1, 1987, substituted "no more than three saddle mounts" for "no more than two saddle mounts" near the middle of the last sentence of subsection (e).

CASE NOTES

Applied in Adams v. Mills, 312 N.C. 181, 322 S.E.2d 164 (1984).

§ 20-117. Flag or light at end of load.

Whenever the load on any vehicle shall extend more than four feet beyond the rear of the bed or body thereof, there shall be displayed at the end of such load, in such position as to be clearly visible at all times from the rear of such load, a red flag not less than 12 inches both in length and width, except that from sunset to sunrise there shall be displayed at the end of any such load a red light plainly visible under normal atmospheric conditions at least 200 feet from the rear of such vehicle. (1937, c. 407, s. 81; 1985, c. 455.)

Effect of Amendments. — The 1985 amendment, effective October 1, 1985, substituted "from sunset to sunrise" for "between one-half hour after sunset and one-half hour before sunrise" near the middle of the section.

§ 20-118. Weight of vehicles and load.

(b) The following weight limitations shall apply to vehicles operating on the highways of the State:

(1) The single-axle weight of a vehicle or combination of vehicles shall not exceed 20,000 pounds.

(2) The tandem-axle weight of a vehicle or combination of vehicles shall not exceed 38,000 pounds.

(3) The gross weight imposed upon the highway by any axle group of a vehicle or combination of vehicles shall not exceed the maximum weight given for the respective distance between the first and last axle of the group of axles measured longitudinally to the nearest foot as set forth in the following table:

*Distance Between Axles**	*Maximum Weight in Pounds for any Group of Two or More Consecutive Axles Including all Tolerances*					
	2 Axles	*3 Axles*	*4 Axles*	*5 Axles*	*6 Axles*	*7 Axles*
4	38000					
5	38000					
6	38000					
7	38000					
8 or less	38000	38000				
more than 8	38000	42000				
9	39000	42500				
10	40000	43500				
11		44000				
12		45000	50000			
13		45500	50500			
14		46500	51500			
15		47000	52000			
16		48000	52500	58000		
17		48500	53500	58500		
18		49500	54000	59000		
19		50000	54500	60000		
20		51000	55500	60500	66000	
21		51500	56000	61000	66500	
22		52500	56500	61500	67000	
23		53000	57500	62500	68000	
24		54000	58000	63000	68500	74000
25		54500	58500	63500	69000	74500
26		55500	59500	64000	69500	75000
27		56000	60000	65000	70000	75500
28		57000	60500	65500	71000	76500
29		57500	61500	66000	71500	77000
30		58500	62000**	66500	72000	77500
31		59000	62500**	67500	72500	78000
32		60000	63500**	68000	73000	78500
33			64000**	68500	74000	79000
34			64500**	69000	74500	80000
35			65500**	70000	75000	
36			66000**	70500	75500	
37			66500**	71000	76000	
38			67500**	72000	77000	
39			68000	72500	77500	
40			68500	73000	78000	
41			69500	73500	78500	
42			70000	74000	79000	
43			70500	75000	80000	
44			71500	75500		
45			72000	76000		
46			72500	76500		
47			73500	77500		
48			74000	78000		
49			74500	78500		
50			75500	79000		
51			76000	80000		
52			76500			

*Distance Between Axles**	*Maximum Weight in Pounds for any Group of Two or More Consecutive Axles Including all Tolerances*					
	2 Axles	*3 Axles*	*4 Axles*	*5 Axles*	*6 Axles*	*7 Axles*
53			77500			
54			78000			
55			78500			
56			79500			
57			80000			

*Distance in Feet Between the Extremes of any Group of Two or More Consecutive Axles.
**See exception in G.S. 20-118(c)(1).

(4) The Department of Transportation may establish light-traffic roads and further restrict the axle weight limit on such light-traffic roads lower than the statutory limits. The Department of Transportation shall have authority to designate any highway on the State Highway System, excluding routes designated by I, U.S. and N.C., as a light-traffic road when in the opinion of the Department of Transportation, such road is inadequate to carry and will be injuriously affected by vehicles using the said road carrying the maximum axle weight. All such roads so designated shall be conspicuously posted as light-traffic roads and the maximum axle weight authorized shall be displayed on proper signs erected thereon.

(c) Exceptions. — The following exceptions apply to G.S. 20-118(b) and 20-118(e).

(1) Two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the first and last axles of such consecutive sets of tandem axles is 36 feet or more. Tank trailers, dump trailers, and ocean going transport containers on two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the second and the fifth axles of such consecutive sets of tandem axles is 30 feet or more. The exception for tank trailers, dump trailers, and ocean transport containers shall expire August 31, 1988.

(2) When a vehicle is operated in violation of G.S. 20-118(b)(1), 20-118(b)(2), or 20-118(b)(3), but the gross weight of the vehicle or combination of vehicles does not exceed that permitted by G.S. 20-118(b)(3), the owner of the vehicle shall be permitted to shift the load within the vehicle, without penalty, from one axle to another to comply with the weight limits in the following cases:
   a. Where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.
   b. Where the vehicle or combination of vehicles has tandem axles, but the tandem-axle weight does not exceed 40,000 pounds.

(3) When a vehicle is operated in violation of G.S. 20-118(b)(4) the owner of the vehicle shall be permitted, without penalty, to shift the load within the vehicle from one axle to another to comply with the weight limits where the single-

axle weight does not exceed the posted limit by 2,500 pounds.

(4) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry by-products or a business engaged in the harvest or processing of seafood when the destination of such vehicle and load is located solely upon said light-traffic road.

(5) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting processed and unprocessed seafood from boats or any other point of origin, meats and agricultural crop products originating from a farm, or forest products originating from a farm or from woodlands, or livestock or poultry by-products from point of origin, on a light-traffic road to the nearest State maintained road which is not posted to prohibit the transportation of statutory load limits.

(6) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4) when such motor vehicles are owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and such motor vehicles are used in connection with installation, restoration or emergency maintenance of utility services.

(7) A wrecker may tow a disabled vehicle or combination of vehicles in an emergency to the nearest feasible point for parking or storage without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section.

(8) A firefighting vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary and any vehicle of a voluntary lifesaving organization, when operated by a member of that organization while answering an official call shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4).

(9) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences or from garbage dumpsters shall, when operating for those purposes, be exempt from the light traffic road limitation as provided by G.S. 20-118(b)(4). This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. 130A-290(4), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14).

(10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be allowed a single axle weight not to exceed

23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. 130A-290(4), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14).

(e) Penalties. —

(1) Except as provided in G.S. 20-118(e)(2), for each violation of the single-axle or tandem-axle weight limits as provided in G.S. 20-118(b)(1), 20-118(b)(2), and 20-118(b)(4), the owner or registrant of the vehicle shall pay to the Department of Transportation a civil penalty in accordance with the following schedule: for the first 1,000 pounds or any part thereof, four cents (4¢) per pound; for the next 1,000 pounds or any part thereof, six cents (6¢) per pound; and for each additional pound, ten cents (10¢) per pound. The foregoing schedule of penalties shall apply separately to each weight limit violated. In all cases of violation of the weight limitation, the penalty shall be computed and assessed on each pound of weight in excess of the maximum permitted in G.S. 20-118(b)(1), 20-118(b)(2), and 20-118(b)(4).

(2) For each violation of the single-axle or tandem-axle weight limit as provided in G.S. 20-118(b)(1) and 20-118(b)(2) by vehicles transporting processed and unprocessed seafood from boats or any other point of origin to a processing plant or a point of further distribution, meats and agricultural crop products originating from a farm, or forest products originating from a farm or from woodlands to first market, or livestock or poultry by-products from point of origin to a rendering plant, or fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters when operating for those purposes, the owner or registrant of the vehicle shall pay to the Department a civil penalty which equals the amount produced by applying one-half of the rate indicated in the schedule in G.S. 20-118(e)(1) to the weight in pounds on each axle in excess of the maximum weight in pounds allowed under G.S. 20-118(b)(1) and 20-118(b)(2).

(3) Except as provided in G.S. 20-118(e)(4), for each violation of any axle-group weight limit as provided in G.S. 20-118(b)(3), the owner or registrant shall pay the Department of Transportation in accordance with the following schedule: for the first 2,000 pounds or any part thereof, two cents (2¢) per pound, for the next 3,000 pounds or any part thereof, four cents (4¢) per pound; for each pound in excess of 5,000 pounds, ten cents (10¢) per pound. The schedule of penalties shall apply separately to each axle-group weight limit violated. The penalty shall be assessed on each pound of weight in excess of the maximum permitted in G.S. 20-118(b)(3).

(4) For each violation of any weight limit as provided in G.S. 20-118(b)(3) by vehicles transporting processed and unprocessed seafood from boats or any other point of origin to a processing plant or a point of further distribution, meats

and agricultural crop products originating from a farm or forest products originating from a farm or woodlands to first market, or livestock or poultry by-products from point of origin to a rendering plant, or fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumptsters when opeating for those purposes, the owner or registrant shall pay to the Department a civil penalty which equals the amount produced by applying one-half of the rate indicated in the schedule in G.S. 20-118(e)(3) to the weight in pounds on each axle group in excess of the maximum weight in pounds allowed under G.S. 20-118(b)(3).

(5) The civil penalties provided in this section shall constituted the sole penalty for violations of G.S. 20-118(b)(1), 20-118(b)(2), 20-118(b)(3), 20-118(b)(4), 20-118(i), and 20-118(j), and violators thereof shall not be subject to criminal action except as provided in G.S. 20-96 and as provided in G.S. 136-72 for any vehicle or combination of vehicles exceeding the safe load carrying capacity for bridges on the State Highway System as established and posted by the Department of Transportation.

(i) The Department of Transportation is authorized to permit the operation on the highways of the State of certain vehicles pursuant to this subsection notwithstanding the provisions of G.S. 20-118(b). No vehicle or combination of vehicles in excess of the weight limitation provided by G.S. 20-118(b) shall operate on the Interstate highways, unless authorized by agreement with or approval of the United States Department of Transportation.

(1) The Department of Transportation is authorized to enter into an agreement with or obtain the approval of the United States Secretary of Transportation on behalf of the State of North Carolina concerning the control of vehicle weight as provided for in section 127 of Title 23 of the United States Code. The agreement or approval may provide as set out in G.S. 20-118(i)(2) for the continued operation of certain vehicles with axle and gross weights which could lawfully use the highways of this State on January 1, 1983, and which except for this subsection, would otherwise be illegal to operate on the highways of the State after October 1, 1983.

(2) The following vehicles will be permitted to operate pursuant to this subsection:

a. Four-axle vehicles with a tri-axle configuration,

b. Five-axle vehicles or combination of vehicles designed solely for the transportation of liquids, or tankers designed for bulk hauling,

c. Five-axle dump trucks with a tandem-axle configuration,

d. Three-axle vehicles with a "dump" body or ready-mixed concrete units equipped with tandem axles,

e. Three-axle and five-axle vehicles engaged in the transportation of construction materials,

f. Vehicles transporting raw and unprocessed agricultural or forest products,

g. Three, four, or five-axle vehicles transporting garbage, refuse, and trash, and

h. Vehicles transporting only packaged fertilizer or packaged agricultural lime.

The authorization for vehicles to operate pursuant to G.S. 20-118(i)(2) on Interstate highways shall terminate October 1, 1988.

(3) The authorization, regulations, penalties and termination of authorization as provided for by the agreement with or approval from the United States Secretary of Transportation shall apply to Interstate highways of the State.

(4) Vehicles operating pursuant to G.S. 20-118(i)(2) shall be subject to the penalties for axle weight, tandem-axle weight and gross vehicle weight for exceeding weights permitted by this subsection at the same rate as is provided for by G.S. 20-118(e).

(5) The Department of Transportation is authorized to promulgate rules and regulations to carry out the provisions of G.S. 20-118(i) and to insure compliance with the agreement with or approval of the United States Secretary of Transportation. The Department of Transportation shall take such action in the name of the State of North Carolina as is necessary to comply with the terms of the agreement entered into with or approval of the United States Secretary of Transportation pursuant to this subsection.

(6) Vehicles described in G.S 20-118(i)(2) shall be permitted to operate on all streets and highways of North Carolina, except Interstate highways until October 1, 1993, subject to light-traffic road limitation, and subject to the penalties for axle weight, tandem-axle weight and gross vehicle weight for exceeding weights permitted by this subsection at the same rate as is provided for by G.S. 20-118(e).

(j) Repealed by Session Laws 1987, c. 392, effective June 18, 1987. (1937, c. 407, s. 82; 1943, c. 213, s. 2; cc. 726, 784; 1945, c. 242, s. 2; c. 569, s. 2; c. 576, s. 7; 1947, c. 1079; 1949, c. 1207, s. 2; 1951, c. 495, s. 2; c. 942, s. 1; c. 1013, ss. 5, 6, 8; 1953, cc. 214, 1092; 1959, c. 872; c. 1264, s. 6; 1963, c. 159; c. 610, ss. 3-5; c. 702, s. 5; 1965, cc. 483, 1044; 1969, c. 537; 1973, c. 507, s. 5; c. 1449, ss. 1, 2; 1975, c. 325; c. 373, s. 2; c. 716, s. 5; c. 735; c. 736, ss. 1-3; 1977, c. 461; c. 464, s. 34; 1977, 2nd Sess., c. 1178; 1981, c. 690, ss. 27, 28; c. 726; c. 1127, s. 53.1; 1983, c. 407; c. 724, s. 1; 1983 (Reg. Sess., 1984), c. 1116, ss. 105-109; 1985, c. 54; c. 274; 1987, c. 392; c. 707, ss. 1-4.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. — Session Laws 1983 (Reg. Sess., 1984), c. 1116, s. 115, is a severability clause.

Session Laws 1987, c. 707, s. 5 provides that the act shall not apply to bridges posted pursuant to § 136-72 and to Interstate Highways.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 1, 1984, deleted "which were manufactured and licensed by the Division of Motor Vehicles prior to October 1, 1983" following "The following vehicles" at the beginning of subdivision (i)(2), deleted "and" at the end of paragraph (i)(2)e, inserted "and" at the end of paragraph (i)(2)f, added paragraph (i)(2)g, and deleted "which were manufactured and licensed by the Division of Motor Vehicles prior to October 1, 1983" following "Vehicle with tandem axles" at the beginning of subdivision (j)(1).

Session Laws 1985, c. 54, effective April 1, 1985, deleted "and" at the end of paragraph f of subdivision (i)(2), inserted "and" at the end of paragraph g of

subdivision (i)(2), and added paragraph h of subdivision (i)(2).

Session Laws 1985, c. 274, effective May 29, 1985, added subdivision (c)(8).

Session Laws 1987, c. 392, effective June 18, 1987, substituted "38,000" for "34,000" in subdivision (b)(2); in the table in subdivision (b)(3) substituted the first six entries in the first three columns for the former first five entries therein and inserted asterisks in the fourth column after the numbers 62000, 62500, 63500, 64000, 64500, and 65500; inserted the last two sentences of subdivision (c)(1); substituted "40,000" for "36,000" in paragraph (c)(2)b; and deleted subsection (j), relating to vehicles with tandem axles.

Session Laws 1987, c. 707, ss. 1-4, effective July 31, 1987, added subdivisions (c)(9) and (c)(10), and inserted "or fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters when operating for those purposes" in subdivisions (e)(2) and (e)(4).

CASE NOTES

Invalid Penalty. — Where the DMV assessed a penalty for operating a vehicle on the highways with a gross weight in excess of that allowed under the license obtained pursuant to § 20-96, but not in excess of the maximum axle weight limits, and such penalty was not authorized by this section, such penalty violated Const., Art. IV, §§ 1 and 3, since there was no reasonable necessity for conferring absolute judicial discretion in the DMV. Young's Sheet Metal & Roofing, Inc. v. Wilkins, 77 N.C. App. 180, 334 S.E.2d 419 (1985), cert. denied and appeal dismissed, 316 N.C. 202, 341 S.E.2d 574 (1986), decided prior to the 1985 amendment to § 20-96.

OPINIONS OF ATTORNEY GENERAL

A truck equipped with a total of four axles operating with one of the axles (air bag) in a raised position and not carrying any load is subject to the penalties prescribed by law if the weight of the truck exceeds the permissible limit for three axles. See opinion of Attorney General to Mr. J.G. Wilson, Director, License, Theft & Weight Enforcement, Division of Motor Vehicles, 52 N.C.A.G. 126 (1983).

Military vehicles being operated pursuant to military orders are not subject to subsection (b) of this section. See opinion of Attorney General to Col. L. M. Brinkley, Division of National Guard, 53 N.C.A.G. 54 (1984).

§ 20-118.3. Vehicle or combination of vehicles operated without registration plate subject to civil penalty.

CASE NOTES

Cited in Young's Sheet Metal & Roofing, Inc. v. Wilkins, 77 N.C. App. 180, 334 S.E.2d 419 (1985).

§ 20-122. Restrictions as to tire equipment.

(c) The Department of Transportation or local authorities in their respective jurisdictions may, in their discretion, issue special permits authorizing the operation upon a highway of traction engines or tractors having movable tracks with transverse corrugation upon the periphery of such movable tracks or farm tractors or other farm machinery.

(1937, c. 407, s. 85; 1939, c. 266; 1957, c. 65, s. 11; 1965, c. 435; 1973, c. 507, s. 5; 1977, c. 464, s. 34; 1979, c. 515.)

Only Part of Section Set Out. — As the rest of the section was not affected, it is not set out.

Editor's Note. — Subsection (c) of § 20-122 is set out above to correct a typographical error in the main volume.

§ 20-122.1. Motor vehicles to be equipped with safe tires.

(a) Every motor vehicle subject to safety equipment inspection in this State and operated on the streets and highways of this State shall be equipped with tires which are safe for the operation of the motor vehicle and which do not expose the public to needless hazard. Tires shall be considered unsafe if cut so as to expose tire cord, cracked so as to expose tire cord, or worn so as to expose tire cord or there is a visible tread separation or chunking or the tire has less than two thirty-seconds inch tread depth at two or more locations around the circumference of the tire in two adjacent major tread grooves, or if the tread wear indicators are in contact with the roadway at two or more locations around the circumference of the tire in two adjacent major tread grooves: Provided, the two thirty-seconds tread depth requirements of this section shall not apply to dual wheel trailers. Provided further that as to trucks owned by farmers and operated exclusively in the carrying and transportation of the owner's farm products which are approved for daylight use only and which are equipped with dual wheels, the tread depth requirements of this section shall not apply to more than one wheel in each set of dual wheels. For the purpose of this section, the following definitions shall apply:

(1) "Chunking" — separation of the tread from the carcass in particles which may range from very small size to several square inches in area.
(2) "Cord" — strands forming a ply in a tire.
(3) "Tread" — portion of tire which comes in contact with road.
(4) "Tread depth" — the distance from the base of the tread design to the top of the tread.

(1969, c. 378, s. 1; c. 1256; 1985, c. 93, ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985, c. 93, s. 3 provides that the act shall not apply to the manner in which tread depth is measured on tires used on farm vehicles which are registered for less than a full calendar year.

Effect of Amendments. — The 1985 amendment, effective January 1, 1986, inserted the language beginning "at two or more locations" and ending "in two adjacent major tread grooves" preceding the proviso in the second sentence of subsection (a) and deleted "measured near the center line of the tire" following "the distance" in subdivision (a)(4).

§ 20-123. Trailers and towed vehicles.

CASE NOTES

Cited in State v. Gainey, 84 N.C. App. 107, 351 S.E.2d 819 (1987).

§ 20-124. Brakes.

CASE NOTES

Brake Failure Is Not Necessarily Negligence. — While this section requires motorists to maintain their brakes in good working order, and failure to do so is negligence per se, the mere fact that one's brakes failed is not enough to establish a breach of the duty of due care. Mann v. Knight, 83 N.C. App. 331, 350 S.E.2d 122 (1986).

Motorist Not Liable for Unexpected Brake Failure. — Where a brake failure is sudden and unexpected and could not have been discovered even with reasonable inspection, the motorist will not be held liable. Mann v. Knight, 83 N.C. App. 331, 350 S.E.2d 122 (1986).

§ 20-125. Horns and warning devices.

(b) Every vehicle owned and operated by a police department or by the Department of Crime Control and Public Safety including the State Highway Patrol or by the Wildlife Resources Commission or the Division of Marine Fisheries and used exclusively for law enforcement purposes, or by a fire department, either municipal or rural, or by a fire patrol, whether such fire department or patrol be a paid organization or a voluntary association, vehicles designed, equipped and used exclusively for the transportation of human tissues and organs for transplantation, and every ambulance used for answering emergency calls, shall be equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

The operators of all such vehicles so equipped are hereby authorized to use such equipment at all times while engaged in the performance of their duties and services, both within their respective corporate limits and beyond.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of any police department or of any fire department, whether the same be municipal or rural, paid or voluntary, county fire marshals, assistant fire marshals, and emergency management coordinators, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in the performance of their official or semiofficial duties or services either within or beyond their respective corporate limits.

And vehicles driven by inspectors in the employ of the North Carolina Utilities Commission shall be equipped with a bell, siren, or exhaust whistle of a type approved by the Commissioner, and all vehicles owned and operated by the State Bureau of Investigation for the use of its agents and officers in the performance of their official duties may be equipped with special lights, bells, sirens,

horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles.

Every vehicle used or operated for law enforcement purposes by the sheriff or any salaried deputy sheriff or salaried rural policeman of any county, whether owned by the county or not, may be, but is not required to be, equipped with special lights, bells, sirens, horns or exhaust whistles of a type approved by the Commissioner of Motor Vehicles. Such special equipment shall not be operated or activated by any person except by a law enforcement officer while actively engaged in performing law enforcement duties.

In addition to the use of special equipment authorized and required by this subsection, the chief and assistant chiefs of each emergency rescue squad which is recognized or sponsored by any municipality or civil preparedness agency, are hereby authorized to use such special equipment on privately owned vehicles operated by them while actually engaged in their official or semiofficial duties or services either within or beyond the corporate limits of the municipality which recognizes or sponsors such organization.

(1937, c. 407, s. 88; 1951, cc. 392, 1161; 1955, c. 1224; 1959, c. 166, s. 1; c. 494; c. 1170, s. 1; c. 1209; 1965, c. 257; 1975, c. 588; c. 734, s. 15; 1977, c. 52, s. 1; c. 438, s. 1; 1979, c. 653, s. 2; 1981, c. 964, s. 19; 1983, c. 32, s. 2; c. 768, s. 5; 1987, c. 266.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective June 2, 1987, inserted "or the Division of Marine Fisheries" near the beginning of the first paragraph of subsection (b).

§ 20-127. Windshields must be unobstructed.

(d) On or after January 1, 1988, it shall be unlawful to operate a motor vehicle registered or which is required to be registered in this State under this Chapter, upon any highway or public vehicular area with a windshield or a front side window to the immediate right or left of the operator, or a rear window used for visibility, which has been darkened, smoked, or tinted after factory delivery. Provided, however, a single application of tinted film which has been registered with and approved by the Commissioner of Motor Vehicles shall be lawful if the manufacturer's label is implanted between the film and glass in the lower left section of each darkened window and is legible from outside the vehicle. The label shall indicate the film registration number, the name and address of the manufacturer and a certification of compliance with North Carolina law. No film or darkening material may be applied on the windshield except to replace the sunshield in the uppermost area as installed by the manufacturer of the vehicle, in which case the label shall be implanted between the film and glass in the upper left section of the windshield and be legible from outside the vehicle. A rear window shall be required for visibility on every vehicle unless the vehicle is equipped with an outside mirror of a type approved by the Commissioner which eliminates the requirement for an inside rearview mirror under the provisions of G.S. 20-126(a) and (b).

(e) No motor vehicle inspection certificate shall be issued on or after January 1, 1988, for a vehicle on which the windshield or front window to the immediate right and left of the operator or the rear window if required for visibility, has been darkened by the

installation of tinted film or by other means, except as permitted under subsection (d) of this section.

(f) Before shipping or making any tinted film available for installation on a motor vehicle in this State, the manufacturer shall apply to the Commissioner for approval and registration of its tinted film and for a label to be used in the identification and certification of compliance with light transmittance and reflectance standards. The Commissioner shall approve no tinted film to be used in the front windows or a rear window if required for visibility unless the manufacturer demonstrates that it has at least thirty-five percent (35%) light transmittance if it is to be used on front, side, or rear windows and a luminous reflectance of not more than twenty percent (20%). A fee shall be paid by the manufacturer with each application for film approval and registration in the approximate amount of the cost to the Division in the review of the applications.

(g) With any delivery of tinted film for installation in vehicles, where approved film is required, the manufacturer shall provide the required labels with written instructions and materials for permanent installation. The use of any label that is not registered, or the misuse of any registered label to mislead motor vehicle safety inspectors, law enforcement officers, or other officials shall constitute a misdemeanor.

(h) Subsections (d) through (g) of this section shall apply only to darkened, smoked or tinted film installed on motor vehicle windows after factory delivery and after the effective date of this act. (1937, c. 407, s. 90; 1953, c. 1254; 1955, c. 1157, s. 2; 1959, c. 1264, s. 7; 1967, c. 1077; 1985, c. 789; 1985 (Reg. Sess., 1986), c. 997; 1987, c. 567.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 18, 1985, added subsections (d) and (e).

The 1985 (Reg. Sess., 1986) amendment effective July 12, 1986, substituted "October 1, 1987" for "January 1, 1987" in the first sentence of subsection (e).

The 1987 amendment, effective July 6, 1987, rewrote subsections (d) and (e), and added new subsections (f), (g) and (h).

§ 20-129. Required lighting equipment of vehicles.

(a) When Vehicles Must Be Equipped. — Every vehicle upon a highway within this State shall be equipped with lighted headlamps and rear lamps as required for different classes of vehicles, and subject to exemption with reference to lights on parked vehicles as declared in G.S. 20-134:

(1) During the period from sunset to sunrise,

(2) When there is not sufficient light to render clearly discernible any person on the highway at a distance of 400 feet ahead, or

(3) When the lack of visibility through the windshield requires the windshield wipers to be activated and the vehicle is within a school zone during the regular school hours of the school year.

(1937, c. 407, s. 92; 1939, c. 275; 1947, c. 526; 1955, c. 1157, ss. 3-5, 8; 1957, c. 1038, s. 1; 1967, cc. 1076, 1213; 1969, c. 389; 1973, c. 531, ss. 1, 2; 1979, c. 175; 1981, c. 549, s. 1; 1985, c. 66; 1987, c. 611.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — The 1985 amendment, effective October 1, 1985, substituted "from sunset to sunrise" for "from a half hour after sunset to a half hour before sunrise" in subsection (a).

The 1987 amendment, effective October 1, 1987, rewrote subsection (a).

CASE NOTES

The violation of a safety statute which results in injury or death will constitute culpable negligence if the violation is willful, wanton, or intentional. But where there is an unintentional or inadvertent violation of the statute, such violation standing alone does not constitute culpable negligence. The inadvertent or unintentional violation of the statute must be accompanied by recklessness of probable consequences of a dangerous nature, when tested by the rule of reasonable prevision, amounting altogether to a thoughtless disregard of consequences or of a heedless indifference to the safety of others. State v. Gooden, 65 N.C. App. 669, 309 S.E.2d 707 (1983), cert. denied, 311 N.C. 766, 321 S.E.2d 150 (1984).

Cited in Mobley v. Hill, 80 N.C. App. 79, 341 S.E.2d 46 (1986).

§ 20-129.1. Additional lighting equipment required on certain vehicles.

In addition to other equipment required by this Chapter, the following vehicles shall be equipped as follows:

(1) On every bus or truck, whatever its size, there shall be the following:

On the rear, two reflectors, one at each side, and one stoplight.

(2) On every bus or truck 80 inches or more in overall width, in addition to the requirements in subdivision (1):

On the front, two clearance lamps, one at each side.

On the rear, two clearance lamps, one at each side.

On each side, two side marker lamps, one at or near the front and one at or near the rear.

On each side, two reflectors, one at or near the front and one at or near the rear.

(3) On every truck tractor:

On the front, two clearance lamps, one at each side.

On the rear, one stoplight.

(4) On every trailer or semitrailer having a gross weight of 4,000 pounds or more:

On the front, two clearance lamps, one at each side.

On each side, two side marker lamps, one at or near the front and one at or near the rear.

On each side, two reflectors, one at or near the front and one at or near the rear.

On the rear, two clearance lamps, one at each side, also two relectors, one at each side, and one stoplight.

(5) On every pole trailer having a gross weight of 4,000 pounds or more:

On each side, one side marker lamp and one clearance lamp which may be in combination, to show to the front, side and rear.

On the rear of the pole trailer or load, two reflectors, one at each side.

Subdivision (10) of § 20-129.1 has a delayed effective date. See notes for date.

(6) On every trailer, semitrailer or pole trailer having a gross weight of less than 4,000 pounds:

On the rear, two reflectors, one on each side. If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stoplight on the towing vehicle, then such vehicle shall also be equipped with one stoplight.

(7) Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

(8) Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

(9) Brake lights (and/or brake reflectors) on the rear of a motor vehicle shall be red. The light illuminating the license plate shall be white. All other lights shall be white, amber, yellow, clear or red.

(10) (Effective March 15, 1989) On every trailer and semitrailer which is 30 feet or more in length and has a gross weight of 4,000 pounds or more, one combination marker lamp showing amber and mounted on the bottom side rail at or near the center of each side of the trailer. (1955, c. 1157, s. 4; 1969, c. 387; 1983, c. 245; 1987, c. 363, s. 1.)

Editor's Note. — Session Laws 1987, c. 363, s. 2 makes subdivision (10) of this section effective March 15, 1989.

Effect of Amendments. — The 1987 amendment, effective March 15, 1989, added subdivision (10).

§ 20-130.1. Use of red or blue lights on vehicles prohibited; exceptions.

(b) The provisions of subsection (a) of this section do not apply to the following:

(1) A police car;

(2) A highway patrol car;

(3) A vehicle owned by the Wildlife Resources Commission and operated exclusively for law-enforcement purposes;

(4) An ambulance;

(5) A vehicle designed, equipped, and used exclusively for the transportation of human tissues and organs for transplantation;

(6) A fire-fighting vehicle;

(7) A school bus;

(8) A vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary;

(9) A vehicle of a voluntary lifesaving organization (including the private vehicles of the members of such an organization) that has been officially approved by the local police authorities and which is manned or operated by members of that organization while answering an official call;

(10) A vehicle operated by medical doctors or anesthetists in emergencies;

(11) A motor vehicle used in law enforcement by the sheriff, or

Subdivision (10) of § 20-129.1 has a delayed effective date. See notes for date.

any salaried rural policeman in any county, regardless of whether or not the county owns the vehicle;

(11a) A vehicle operated by the State Fire Marshal or his representatives in the performance of their duties, whether or not the State owns the vehicle;

(12) A vehicle operated by any county fire marshal, assistant fire marshal, or emergency management coordinator in the performance of his duties, regardless of whether or not the county owns the vehicle; and

(13) Any lights that may be prescribed by the Interstate Commerce Commission.

(1943, c. 726; 1947, c. 1032; 1953, c. 354; 1955, c. 528; 1957, c. 65, s. 11; 1959, c. 166, s. 2; c. 1170, s. 2; 1967, c. 651, s. 1; 1971, c. 1214; 1977, c. 52, s. 2; c. 438, s. 2; 1979, c. 653, s. 1; c. 887; 1983, c. 32, s. 1; c. 768, s. 6; 1985 (Reg. Sess., 1986), c. 1027, s. 50.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Local Modification. — Macon: 1985, c. 231.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective July 16, 1986, added subdivision (b)(11a).

§ 20-134. Lights on parked vehicles.

CASE NOTES

Applied in King v. Allred, 309 N.C. 113, 305 S.E.2d 554 (1983); State v. Gooden, 65 N.C. App. 669, 309 S.E.2d 707 (1983).

§ 20-135. Safety glass.

(a) It shall be unlawful to operate knowingly, on any public highway or street in this State, any motor vehicle which is registered in the State of North Carolina and which shall have been manufactured or assembled on or after January 1, 1936, unless such motor vehicle be equipped with safety glass wherever glass is used in doors, windows, windshields, wings or partitions; or for a dealer to sell a motor vehicle manufactured or assembled on or after January 1, 1936, for operation upon the said highways or streets unless it be so equipped. The provisions of this Article shall not apply to any motor vehicle if such motor vehicle shall have been registered previously in another state by the owner while the owner was a bona fide resident of said other state.

(b) The term "safety glass" as used in this Article shall be construed as meaning glass so treated or combined with other materials as to reduce, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by glass when the glass is cracked or broken.

(c) The Division of Motor Vehicles shall approve and maintain a list of the approved types of glass, conforming to the specifications and requirements for safety glass as set forth in this Article, and in accordance with standards recognized by the United States Bureau of Standards, and shall not issue a license for or relicense any motor vehicle subject to the provisions of this Article unless such motor vehicle be equipped as herein provided with such approved type of glass.

(d) Repealed by Session Laws 1985, c. 764, s. 26, effective July 1, 1986. (1937, c. 407, s. 98; 1941, c. 36; 1975, c. 716, s. 5; 1985, c. 764, s. 26.)

Editor's Note. — Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense."

Effect of Amendments. — The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, deleted subsection (d), which formerly read "The owner of motor vehicle which is operated knowingly or any dealer who sells a motor vehicle in violation of the provisions of this Article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than twenty-five dollars ($25.00) or be imprisoned not more than 30 days, or both, in the discretion of the court."

§ 20-135.2A. Seat belt use mandatory.

(a) Each front seat occupant who is 16 years of age or older and each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208 shall have such a safety belt properly fastened about his body at all times when the vehicle is in forward motion on a street or highway in this State. Each driver of a passenger motor vehicle manufactured with seat safety belts in compliance with Federal Motor Vehicle Safety Standard No. 208, who is transporting in the front seat a person who is (1) under 16 years of age and (2) not required to be restrained in accordance with G.S. 20-137.1, shall have the person secured by such a safety belt at all times when the vehicle is operated in forward motion on a street or highway in this State. Persons required to be restrained in accordance with G.S. 20-137.1 shall be secured as required by that section.

(b) "Passenger Motor Vehicle," as used in this section, means a motor vehicle with motive power designed for carrying 10 passengers or fewer, but does not include a motorcycle, a motorized pedacycle or a trailer.

(c) This section shall not apply to any of the following:

(1) A driver or occupant with a medical or physical condition that prevents appropriate restraint by a safety belt or with a professionally certified mental phobia against the wearing of vehicle restraints;

(2) A motor vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter carrier;

(3) A driver or passenger frequently stopping and leaving the vehicle or delivering property from the vehicle if the speed of the vehicle between stops does not exceed 20 miles per hour;

(4) Any vehicle registered and licensed as a property-carrying vehicle in accordance with G.S. 20-88, while being used for agricultural or commercial purposes; or

(5) A motor vehicle not required to be equipped with seat safety belts under federal law.

(d) Evidence of failure to wear a seat belt shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section.

(e) Any person violating this section during the period from October 1, 1985, to December 31, 1986, shall be given a warning of violation only. Thereafter, any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.

(f) No drivers license points or insurance surcharge shall be assessed on account of violation of this section.

(g) The Commissioner of the Division of Motor Vehicles and the Department of Public Instruction shall incorporate in driver education programs and driver licensing programs instructions designed to encourage compliance with this section as an important means of reducing the severity of injury to the users of restraint devices and on the requirements and penalties specified in this law.

(h) The Department of Transportation through the Governor's Highway Safety Program shall evaluate the effectiveness of this section and shall include a report of findings in its report on highway safety no later than October 1, 1988. (1985, c. 222, s. 1; 1987, c. 623.)

Editor's Note. — Session Laws 1985, c. 222, s. 2 makes this section effective October 1, 1985. Section 2 further provides that the act shall cease to be effective if, and upon such date as, a final determination by lawful authority is made that the North Carolina law on mandatory safety belt usage does not meet the minimum criteria established by the United States Department of Transportation for State mandatory safety belt usage laws necessary to rescind the federal rule requiring automobile manufacturers to phase in automatic occupant restraints in automobiles.

Effect of Amendments. — The 1987 amendment, effective July 16, 1987, rewrote subsection (d).

Legal Periodicals. — For note, "The Seat Belt Defense and North Carolina's New Mandatory Usage Law." See 64 N.C.L. Rev. 1127 (1986).

§ 20-137. Unlawful display of emblem or insignia.

It shall be unlawful for any person to display on his motor vehicle, or to allow to be displayed on his motor vehicle, any emblem or insignia of any organization, association, club, lodge, order, or fraternity, unless such person be a member of the organization, association, club, lodge, order, or fraternity, the emblem or insignia of which is so displayed. (Ex. Sess. 1924, c. 63; 1985, c. 764, s. 27.)

Editor's Note. — Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense."

Effect of Amendments. — The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, deleted the second paragraph, which read "Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be subject to a fine not exceeding fifty dollars ($50.00) or imprisonment for a period not exceeding 30 days."

§ 20-137.1. Child restraint systems required.

(a) Every driver who is transporting a child of less than six years of age shall have the child properly secured in a child passenger restraint system (car safety seat) which met applicable federal standards at the time of its manufacture. The requirements of this section may be met when the child is three years of age or older by securing the child in a seat safety belt.

(b) The provisions of this section shall not apply: (i) to vehicles registered in another state or jurisdiction; (ii) to ambulances or other emergency vehicles; (iii) when the child's personal needs are being attended to; (iv) if all seating positions equipped with child passenger restraint systems or seat belts are occupied; or (v) to vehicles which are not required by federal law or regulation to be equipped with seat belts.

(c) Any person convicted of violating this section may be punished by a fine not to exceed twenty-five dollars ($25.00). No driver charged under this section for failure to have a child under three years of age properly secured in a restraint system shall be convicted if he produces at the time of his trial proof satisfactory to the court that he has subsequently acquired an approved child passenger restraint system.

(d) No driver license points or insurance points shall be assessed for a violation of this section; nor shall a violation constitute negligence per se or contributory negligence per se nor shall it be evidence of negligence or contributory negligence. (1981, c. 804, ss. 1, 4, 5; 1985, c. 218.)

Effect of Amendments. — The 1985 amendment, effective July 1, 1985, rewrote this section.

CASE NOTES

Regulations promulgated by the State Division of Motor Vehicles designed to insure that manufacturers comply with applicable standards for child passenger restraint systems by requiring verification of any equipment regulated by this section are preempted by the National Motor Vehicle Safety Act of 1966, 15 U.S.C.A. § 1381 et seq., as amended. Juvenile Prods. Mfrs. Ass'n v. Edmisten, 568 F. Supp. 714 (E.D.N.C.), motion to reconsider denied, 582 F. Supp. 376 (E.D.N.C. 1983).

Part 10. Operation of Vehicles and Rules of the Road.

§ 20-138.1. Impaired driving.

Legal Periodicals. — For comment, "Liability of Commercial Vendors, Employers, and Social Hosts for Torts of the Intoxicated," see 19 Wake Forest L. Rev. 1013 (1983).

For note discussing the definition of "driving" under the North Carolina Safe Roads Act, in light of State v. Fields, 77 N.C. App. 404, 335 S.E.2d 69 (1985), see 64 N.C.L. Rev. 1278 (1986).

CASE NOTES

VI. Sentencing.

I. IN GENERAL.

Editor's Note. — The note relating to the case of State v. Hatcher, 210 N.C. 55, 185 S.E. 435 (1936), under the catchline **"Operate" Construed** in the main volume, should be deleted.

The following note should be substituted for the notes relating to the case of State v. Carter, 15 N.C. App. 391, 190 S.E.2d 241 (1972) in the main volume under the catchlines **"Driving" Construed** and **"Operate" Construed:**

It could be fairly and logically inferred from the circumstantial evidence offered by the State that defendant drove his vehicle on the highway and that he did so while he was under the influence of intoxicating liquor, where defendant was found asleep and intoxicated sitting in the driver's seat of his car, which was stopped in its proper lane at a stop sign, with the lights out and the engine running; no one else was in or near the car; and defendant stated to the officer that he had gone to Zebulon earlier that night and was on his way home. State v. Carter, 15 N.C. App. 391, 190 S.E.2d 241 (1972).

Constitutionality. —

Section 20-139.1(b3) does not create an impermissible classification and the Safe Roads Act (§ 20-138.1 et seq.) does not deny the equal protection of the laws. State v. Howren, 312 N.C. 454, 323 S.E.2d 335 (1984).

Subdivision (a)(2) of this section does not contravene constitutional due process. State v. Rose, 312 N.C. 441, 323 S.E.2d 339 (1984).

Subdivision (a)(2) is not unconstitutionally vague and uncertain, nor does it violate a driver's substantive due process rights. State v. Ferrell, 75 N.C. App. 156, 330 S.E.2d 225, cert. denied and appeal dismissed, 314 N.C. 333, 333 S.E.2d 492 (1985).

For case reaffirming the constitutionality of Subdivision (a)(2) of this section and § 20-4.01 (33a), see State v. Denning, 316 N.C. 523, 342 S.E.2d 855 (1986).

The legislature may constitutionally make it a crime for persons to have an alcohol concentration of 0.10 or more at any relevant time after driving on the highways and public vehicular areas of this State and that is all subdivision (a)(2) of this section does. State v. Howren, 312 N.C. 454, 323 S.E.2d 335 (1984).

A legislature may not declare an individual guilty or presumptively guilty of crime. Subdivision (a)(2) of this section does not run afoul of that prohibition. By stating that anyone who drives a vehicle upon a highway, street, or public vehicular area after having consumed such an amount of alcohol that he has a blood-alcohol concentration of 0.10 or more at any relevant time after the driver has committed the offense of driving while impaired, the legislature has merely stated the elements of the offense, proof of which constitutes guilt. State v. Howren, 312 N.C. 454, 323 S.E.2d 335 (1984).

Courts in other jurisdictions in considering challenges to driving while impaired statutes have agreed that a 0.10 blood-alcohol concentration is not an unconstitutional vague standard simply because a drinking driver does not know precisely when he has reached that level. These courts have adopted the position that all persons are presumed to know the law and a defendant who drinks and then drives takes the risk that his blood-alcohol content will exceed the legal maximum. The N.C. Superior Court agrees with this rationale. State v. Rose, 312 N.C. 441, 323 S.E.2d 339 (1984).

Assimilation of Section into Federal Law. — Under 18 U.S.C. § 13 this section, the driving while impaired statute of North Carolina, is assimilated into federal law, but an offender can only be convicted of a misdemeanor in the federal court and his punishment therein cannot exceed a fine of $1,000 and imprisonment for a term in excess of one year. Such a misdemeanor is within the jurisdiction of the federal magistrates, subject to the provisions of 18 U.S.C. § 3401. United States v. Kendrick, 636 F. Supp. 189 (E.D.N.C. 1986).

"Driving" Construed. —

Although distinctions may have been made between driving and operating in prior case law and prior statutes regulating motor vehicles, such a distinction is not supportable under § 20-138.1. Since "driver" is defined in § 20-4.01 simply as an "operator" of a vehicle, the legislature intended the two words to be

synonomous. State v. Coker, — N.C. —, 323 S.E.2d 343 (1984).

One "drives" within the meaning of this section if he is in actual physical control of a vehicle which is in motion or which has the engine running. State v. Fields, 77 N.C. App. 404, 335 S.E.2d 69 (1985); State v. Mabe, — N.C. App. —, 355 S.E.2d 186 (1987).

The trial court did not err in finding that the defendant was "driving" a vehicle within the meaning of this section when he sat behind the steering wheel in the driver's seat of the car and started the car's engine in order to make the heater operable, but the car remained motionless on the street. State v. Fields, 77 N.C. App. 404, 335 S.E.2d 69 (1985).

"Operate" Construed. —

Although distinctions may have been made between driving and operating in prior case law and prior statutes regulating motor vehicles, such a distinction is not supportable under § 20-138.1. Since "driver" is defined in § 20-4.01 simply as an "operator" of a vehicle, the legislature intended the two words to be synonomous. State v. Coker, — N.C. —, 323 S.E.2d 343 (1984).

Sufficient Evidence That Defendant Physically Controlled Vehicle. — Evidence that defendant was seated behind the steering wheel of a car stopped on the handicapped or wheelchair ramp in a hotel parking lot, which car had its motor running, and that when aroused, the defendant himself turned off the car's engine, was sufficient to support a finding that the defendant was in actual physical control of the vehicle. State v. Mabe, — N.C. App. —, 355 S.E.2d 186 (1987).

A horse is a vehicle for the purpose of charging a violation of this section. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

Where the evidence shows that defendant was riding a horse on a street while defendant had an alcohol concentration of 0.18, the evidence is sufficient from which a jury could find that defendant drove a vehicle upon a street while under the influence of an impairing substance. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

Park Grounds as Public Vehicular Area. — Evidence held to permit a finding that at the time in question portion of park grounds legally in use as a parking lot was a "public vehicular area" within the meaning and intent of that phrase as used in § 20-4.01(32), so as to permit a conviction under subsection (a) of this section for impaired driving thereon. State v. Carawan, 80 N.C. App. 151, 341 S.E.2d 96, cert. denied, 317 N.C. 337, 346 S.E.2d 141 (1986).

Meaning of "Impaired". — Under our former "driving under the influence" statutes the test was whether the accused had drunk a sufficient quantity of intoxicating beverage or taken a sufficient amount of narcotic drugs to cause him to lose the normal control of his bodily or mental faculties, or both, to such an extent that there was an appreciable impairment of either or both of these faculties. This section consolidated existing impairment offenses into a single offense with two different methods of proof, but it does not appear to have changed the basic definition of "impaired." State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985).

Proof of Impaired Driving. — The offense of impaired driving is proven by evidence that defendant drove a vehicle on any highway in this State while his physical or mental faculties, or both, were "appreciably impaired by an impairing substance." State v. George, 78 N.C. App. 580, 335 S.E.2d 768 (1985).

Statutory Duty Imposed. — Pursuant to this section, a person under the influence of an impairing substance commits the offense of impaired driving if he drives a car on any public road. Thus, the statutory law imposes a duty on all persons to avoid driving while under the influence of an impairing substance. King v. Allred, 76 N.C. App. 427, 333 S.E.2d 758, cert. denied, 315 N.C. 184, 337 S.E.2d 857 (1985).

Violation as Culpable Negligence. —

This section is a statute designed for the protection of human life and limb, and as such, it is a matter of law that a violation of its provisions constitutes culpable negligence. State v. McGill, 314 N.C. 633, 336 S.E.2d 90 (1985).

It is negligence per se to operate a vehicle while impaired within the meaning of this section. Baker v. Mauldin, 82 N.C. App. 404, 346 S.E.2d 240 (1986).

Death caused by violation, etc. —

When a death is caused by one who was driving under the influence of alcohol, only two elements must exist for the successful prosecution of manslaughter: A willful violation of § 20-138 (now this section) and the causal link between that violation and the death. If these elements are present, the State need not

demonstrate that defendant violated any other rule of the road, nor that his conduct was in any other way wrongful. State v. McGill, 314 N.C. 633, 336 S.E.2d 90 (1985).

Question of contributory negligence of plaintiff's decedent, who was killed in an accident while riding as a passenger in a car driven by defendant, where defendant admitted in his answer that he was driving while mentally and physically impaired in violation of this section, was for the jury. Baker v. Mauldin, 82 N.C. App. 404, 346 S.E.2d 240 (1986).

The result of a breathalyzer analysis is crucial to a conviction. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

Proof of Violation of Section. — This section creates one offense which may be proved by either or both theories detailed in subdivisions (a)(1) and (2). State v. Coker, 312 N.C. 432, 323 S.E.2d 343 (1984).

Failure to Inform Defendant of Rights. — Where the defendant is not advised of his rights under § 20-16.2(a), including, under § 20-16.2(a)(5), the right to have another alcohol concentration test performed by a qualified person of his own choosing, the State's test is inadmissible in evidence. State v. Gilbert, — N.C. App. —, 355 S.E.2d 261 (1987).

Statutory violations by magistrate, who failed to inform defendant of his rights to pretrial release under either the general provisions of § 15A-511 or the more specific provisions of § 15A-534.2, did not justify dismissal of driving while impaired charges. State v. Gilbert, — N.C. App. —, 355 S.E.2d 261 (1987).

Punitive damages may be recovered against impaired drivers in certain situations without regard to the drivers' motives or intent. Huff v. Chrismon, 68 N.C. App. 525, 315 S.E.2d 711, cert. denied, 311 N.C. 756, 321 S.E.2d 134 (1984).

Applied in State ex rel. Edmisten v. Tucker, 312 N.C. 326, 323 S.E.2d 294 (1984).

Cited in State v. Hollingsworth, 77 N.C. App. 36, 334 S.E.2d 463 (1985); United States v. Canane, 622 F. Supp. 279 (W.D.N.C. 1985); State v. Haislip, 79 N.C. App. 656, 339 S.E.2d 832 (1986); Crow v. North Carolina, 642 F. Supp. 953 (W.D.N.C. 1986); State v. Hicks, — N.C. App. —, 352 S.E.2d 275 (1987); State v. Warren, — N.C. App. —, 352 S.E.2d 276 (1987).

II. DRIVING UNDER THE INFLUENCE.

Use of Blood Alcohol Level as Proof. — See State v. Lockamy, 65 N.C. App. 75, 308 S.E.2d 750 (1983), decided under former § 20-138.

The statutory blood alcohol concentration (BAC) is not a sine qua non of driving under the influence. The State may prove driving under the influence where the BAC is entirely unknown or less than 0.10. State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985).

Prior convictions are not an element of the offense of driving while impaired, but are now merely one of several factors relating to punishment. State v. Denning, 316 N.C. 523, 342 S.E.2d 855 (1986).

Where there was evidence that defendant had a blood alcohol concentration (BAC) of .09 some two and one-half hours after accident, and no evidence of drinking between the time of the accident and the sample, and police officer smelled a moderate odor of alcohol on defendant's person at the accident scene, observed her slurred speech and glassy eyes, and gave his opinion that she had consumed some controlled substance to an appreciable degree that would have affected both her mental and physical faculties, the evidence was sufficient to go to the jury on the question of DUI, regardless of additional expert extrapolation evidence. State v. Catoe, 78 N.C. App. 167, 336 S.E.2d 691, supersedeas granted, 315 N.C. 186, 338 S.E.2d 107 (1985), cert. denied, 316 N.C. 380, 344 S.E.2d 1 (1986).

The administration of a breath analysis is not a critical stage of the prosecution for driving while impaired entitling defendant to counsel. For this reason, it was not error for the trial court to refuse to dismiss the driving while impaired charge based on a violation of defendant's Sixth Amendment right to counsel at a critical stage of the prosecution. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

There is no constitutional right to have an attorney present prior to submitting to chemical analysis. State v. Howren, 312 N.C. 454, 323 S.E.2d 335 (1984).

Right of Accused to Communicate with Counsel and Others. —

Application of a per se prejudice rule as set forth in State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971), annotated under this catchline in the main volume, is inappropriate in cases involving a violation of subdivision (a)(2) of this section, driving with an alcohol concentration of 0.10 or more. State v. Knoll, — N.C. App. —, 352 S.E.2d 463 (1987).

Under this section, as amended, denial of access is no longer inherently prejudicial to a defendant's ability to gather evidence in support of his innocence in every driving while impaired case, since an alcohol concentration of 0.10 is sufficient. State v. Gilbert, — N.C. App. —, 355 S.E.2d 261 (1987), distinguishing State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971), which was decided when the statute provided that a 0.10 alcohol concentration merely created an inference of intoxication.

Breathalyzer Reading of 0.06 Does Not Create Presumption That Defendant Not Impaired. — Contention that because a blood alcohol concentration of 0.10 or more is illegal per se under subdivision (a)(2) of this section, a breathalyzer reading of 0.06 must create a presumption that the defendant is not impaired is totally without merit and has no basis in statutory or case law. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

Evidence Held Sufficient, etc. —

Evidence held sufficient for a reasonable jury to infer that defendant who was found asleep in driver's seat in car which had run off the road and into a fence was under the influence of an impairing substance when he drove the vehicle. State v. Mack, 81 N.C. App. 578, 345 S.E.2d 223 (1986).

Evidence of Impairment Held Sufficient. — In addition to evidence showing that defendant had a blood alcohol content of 0.06, evidence that defendant was arrested by a police officer who testified that in her opinion, defendant was under the influence of alcohol based on observation of defendant, defendant's driving on the occasion in question, the odor of alcohol about her person and her inability to perform satisfactorily certain sobriety tests constituted substantial evidence, separate and apart from the breathalyzer result, that defendant's mental and physical faculties were appreciably impaired under subdivision (a)(1) of this section. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

III. DRIVING WITH 0.10 PERCENT OR MORE ALCOHOL IN BLOOD.

Right of Accused to Communicate with Counsel and Others. — Application of a per se prejudice rule as set forth in State v. Hill, 277 N.C. 547, 178 S.E.2d 462 (1971) is inappropriate in cases involving a violation of subdivision (a)(2) of this section, driving with an alcohol concentration of 0.10 or more. State v. Knoll, — N.C. App. —, 352 S.E.2d 463 (1987).

Denial of Access to Counsel and Others Not Inherently Prejudicial. — Because of the change in North Carolina's driving while intoxicated laws which occurred in 1973 when former § 20-138 was repealed and this section was enacted, denial of access is no longer inherently prejudicial to a defendant's ability to gather evidence in support of his innocence in every driving while impaired case. Prejudice may or may not occur, since a chemical analysis result of 0.10 or more is sufficient, on its face, to convict. State v. Knoll, — N.C. App. —, 352 S.E.2d 463 (1987).

Proof of Prejudice Resulting from Denial of Access. — While a defendant charged with an offense under this section might be prejudiced by a denial of access or unwarranted detention, at the very least, such defendant must show that lost evidence or testimony would have been helpful to his defense, that the evidence would have been significant, and that the evidence or testimony was lost as a result of the statutory deprivations of which he complains. State v. Knoll, — N.C. App. —, 352 S.E.2d 463 (1987).

Proof. — Once it is determined that the chemical analysis of defendant's breath is valid, then a reading of 0.10 constitutes reliable evidence and is sufficient to satisfy the State's burden of proof as to this element of the offense of driving while impaired. State v. Shuping, 312 N.C. 421, 323 S.E.2d 350 (1984).

Expression of Concentration in Grams Per Milliliters or in Liters Not Required. — There is no requirement in this section or elsewhere in the Motor Vehicle Code that a person's alcohol concentration be expressed in terms of grams per milliliters of blood or liters of breath, nor have the courts interpreted this section as requiring such specificity;

moreover, where both the chemical analyst who testified about the test results and the trial court defined the term "alcohol concentration" for the jury so that it was completely clear what was meant by the term, there was no error in the admission of the test results. State v. Jones, 76 N.C. App. 160, 332 S.E.2d 494 (1985).

Evidence Corroborating Defendant's Admissions. — Evidence aliunde admissions by defendant was sufficient to corroborate defendant's admission that he drove vehicle which was found wrecked on a public highway or vehicular area after he had consumed alcohol and, when considered with his admissions, was sufficient to support a reasonable inference that at the time he was driving the motor vehicle he had consumed a sufficient amount of alcohol to raise his blood alcohol level to 0.10% or greater at a relevant time after driving. State v. Trexler, 316 N.C. 528, 342 S.E.2d 878 (1986).

Extrapolation Evidence. — In prosecution in which the jury found defendant guilty of DUI and driving on the wrong side of the road, testimony of expert witness that the average person displays a certain rate of decline in blood alcohol concentration (BAC) in the hours after the last consumption of alcohol, and that based on that average rate of decline, defendant's BAC, which was .09 some two and one-half hours after the accident, would have been approximately 0.13 at the time of the accident, was not improper. State v. Catoe, 78 N.C. App. 167, 336 S.E.2d 691, supersedeas granted, 315 N.C. 186, 338 S.E.2d 107 (1985), cert. denied, 316 N.C. 380, 344 S.E.2d 1 (1986).

IV. PROCEDURE.

Editor's Note. — The cases under the catchline **Arrest without Warrant** in the main volume should be deleted. See now § 15A-401.

Jury is responsible for finding facts which support the conclusion that the elements of the offense have been proven beyond a reasonable doubt by the State. Once the offense is so proved, the jury has no further responsibility; it does not find aggravating or mitigating circumstances, or the existence of grossly aggravating factors. The jury only determines guilt or innocence of driving while impaired. Field v. Sheriff of Wake County, 654 F. Supp. 1367 (E.D.N.C. 1986).

Bifurcated Procedure Constitutional. — The bifurcated procedure that the legislature has established for impaired driving cases, with the jury determining whether this section has been violated and the judge determining the length of punishment required under § 20-179, is constitutional. State v. Field, 75 N.C. App. 647, 331 S.E.2d 221, cert. denied and appeal dismissed, 315 N.C. 186, 337 S.E.2d 582 (1985).

Evidence of Wanton Conduct Held Sufficient to Go to Jury. — In a negligence action, the evidence of the defendant's wanton conduct was sufficient to go to the jury, where defendant admitted: awareness of her own substantial intoxication, indifference to her duty under this section to avoid operating a motor vehicle while impaired, and obliviousness to the duty under § 20-158 to stop at the five stoplights between the cocktail lounge and the accident. It was for the jury to determine whether defendant's negligence evinced a wilful or reckless indifference to the rights of others, and then, whether her wilful or wanton conduct was the proximate cause of the accident. King v. Allred, 76 N.C. App. 427, 333 S.E.2d 758, cert. denied, 315 N.C. 184, 337 S.E.2d 857 (1985).

V. INSTRUCTIONS.

Instruction Not Mandated. — In a prosecution for driving while impaired, the court was not required to instruct the jury that the breathalyzer result should not be considered by them unless they found first that the test was performed in accord with regulations promulgated by the Commission of Health Services. State v. DeVane, 81 N.C. App. 524, 344 S.E.2d 362 (1986).

Failure to Instruct as to Subdivision (a)(2) Not Error Where Breathalyzer Reading Was 0.06. — Evidence of a per se 0.10 violation under subdivision (a)(2) of this section was not sufficient to submit to the jury where breathalyzer result indicated a blood alcohol content of 0.06, and accordingly, it was not error for the trial court to fail to instruct the jury concerning subdivision (a)(2) on its own motion. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

VI. SENTENCING.

Increase in Punishment Based on Aggravating Factor Did Not Deprive Right to Jury. — A trial judge's increasing punishment under the Safe Roads Act of 1983 after a finding of a

grossly aggravating factor, that the defendant had a prior conviction for a similar offense within seven years, did not in any way deprive the defendant of his right to jury trial. State v. Denning, 76 N.C. App. 156, 332 S.E.2d 203 (1985), modified and aff'd, 316 N.C. 523, 342 S.E.2d 855 (1986).

Serious Injury to Another Is Sentencing Factor. — Whether the defendant seriously injured another person was not an element of the crime of driving while impaired; it was a sentencing factor that the General Assembly deemed to be important in punishing those convicted of driving while impaired. State v. Field, 75 N.C. App. 647, 331 S.E.2d 221, cert. denied and appeal dismissed, 315 N.C. 186, 337 S.E.2d 582 (1985).

Offense and Sentencing Scheme Unconstitutional. — A judicial finding that the defendant's impaired driving caused serious injury to persons, places a greater stigma upon the defendant's name than simply a finding that he drove while impaired. Such a finding automatically subjected defendant to a mandatory active jail sentence and a range of permissible punishment that is twice as severe as the maximum punishment to which he otherwise was subject. A specific component of a prohibited transaction which gives rise to both a special stigma and to an enhanced permissible punishment must be treated as a fact necessary to constitute the crime. For the foregoing reasons, inadequate protection was afforded the defendant under the offense and sentencing scheme of §§ 20-138.1 and 20-179, and the defendant was deprived of his Fourteenth Amendment guarantee of due process, and his Sixth Amendment guarantee of trial by jury. Field v. Sheriff of Wake County, 654 F. Supp. 1367 (E.D.N.C. 1986).

§ 20-138.3. Driving by provisional licensee after consuming alcohol or drugs.

(c) Punishment; Effect When Impaired Driving Offense Also Charged. — The offense in this section is a misdemeanor punishable under G.S. 20-176(c). It is not, in any circumstances, a lesser included offense of impaired driving under G.S. 20-138.1, but if a person is convicted under this section and of an offense involving impaired driving arising out of the same transaction, the aggregate punishment imposed by the court may not exceed the maximum applicable to the offense involving impaired driving, and any minimum punishment applicable must be imposed. (1983, c. 435, s. 34; 1985 (Reg. Sess., 1986), c. 852, s. 11.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective September 1, 1986, rewrote the first sentence of subsection (c), which read "The offense in this section is punishable under G.S. 20-176(b)."

§ 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.

(b4) Introducing Routine Records Kept as Part of Breath-Testing Program. — In civil and criminal proceedings, any party may introduce, without further authentication, simulator logs and logs for other devices used to verify a breath-testing instrument, certificates and other records concerning the check of ampoules and of simulator stock solution and the stock solution used in any other equilibration device, preventive maintenance records, and other records that are routinely kept concerning the maintenance and

operation of breath-testing instruments. In a criminal case, however, this subsection does not authorize the State to introduce records to prove the results of a chemical analysis of the defendant or of any validation test of the instrument that is conducted during that chemical analysis. (1963, c. 966, s. 2; 1967, c. 123; 1969, c. 1074, s. 2; 1971, c. 619, ss. 12, 13; 1973, c. 476, s. 128; c. 1081, s. 2; c. 1331, s. 3; 1975, c. 405; 1979, 2nd Sess., c. 1089; 1981, c. 412, s. 4; c. 747, s. 66; 1983, c. 435, s. 26; 1983 (Reg. Sess., 1984), c. 1101, s. 20.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 6, 1984, added subsection (b4).

Legal Periodicals. —

For note discussing North Carolina's Validation of the Warrantless Seizure of Blood from an Unconscious Suspect, in Light of State v. Hollingsworth, 77 N.C. App. 36, 334 S.E.2d 463 (1985), see 21 Wake Forest L. Rev. 1071 (1986).

CASE NOTES

I. IN GENERAL.

Constitutionality. — See State v. Jones, 63 N.C. App. 411, 305 S.E.2d 221, cert. denied and appeal dismissed, 309 N.C. 323, 307 S.E.2d 171 (1983).

Subsection (b2) does not provide an unconstitutional shifting of the burden of proof to defendant. The possibility that the breathalyzer may not have been properly maintained is a affirmative defense to be established by defendant and the State may permissibly put the burden of establishing affirmative defenses on the defendant. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

The requirement of subsection (b3) of this section that defendants charged with impaired driving be given two breathalyzer tests after January 1, 1985, does not create an impermissible classification denying defendant equal protection of the laws. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

Subsection (b3) does not create an impermissible classification and the Safe Roads Act (§ 20-138.1 et seq.) does not deny the equal protection of the laws. State v. Howren, 312 N.C. 454, 323 S.E.2d 335 (1984).

Section (e1) is constitutional under the provisions of U.S. Const., Amend. 6 and N.C. Const., Art. I, §§ 19 and 23. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

Subsection (e1) of this section does not violate the accused's right to confrontation. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

Miranda Requirements Inapplicable, etc. —

As breathalyzer results are not testimonial evidence, Miranda warnings are not required prior to administering a breathalyzer. State v. White, 84 N.C. App. 111, 351 S.E.2d 828, cert. denied, — N.C. —, 353 S.E.2d 404 (1987).

Defendant's Allegedly Incriminating Statements Held Harmless. — Admission of evidence that after defendant blew into breathalyzer and was shown the reading, he made statements indicating his disbelief at the result, thus allegedly creating an inference that he had registered a reading in excess of the legal limit on the first test, was harmless in light of other evidence of defendant's guilt, including his refusal to take a second test. State v. Wike, — N.C. App. —, 355 S.E.2d 221 (1987).

This section contemplates situations in which more than two samples may be required to constitute a valid chemical analysis. Watson v. Hiatt, 78 N.C. App. 609, 337 S.E.2d 871 (1985).

Refusal to Give More Than Two Samples. — Where petitioner provided two breath samples resulting in readings of .28 and .31 and then refused to provide any more samples, her conduct amounted to a willful refusal under § 20-16.2(c), within the meaning of subsection (b3) of this section. Watson v. Hiatt, 78 N.C. App. 609, 337 S.E.2d 871 (1985).

"Chemical analyst" for purposes of this section includes a person who was validly licensed by the Department of Human Resources to perform chemical analyses immediately prior to the enactment of the Safe Roads Act. To hold otherwise would mean that an indi-

vidual licensed to perform chemical analyses under one statute would automatically lose his license when the testing procedures are merely recodified in another statute. Obviously the legislature did not intend that result. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

The use of a chemical analyst's affidavit, in lieu of the analyst's live appearance, by the State in a criminal trial in the district court division of the general court of justice as proof of the facts noted in the chemical analyst's affidavit, does not deny to the criminal defendant any right or privilege granted by the Constitution of the United States or the Constitution of the State of North Carolina. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

The legislature, through subsection (e1) of this section, has enacted a constitutionally permissible procedure attuned to scientific and technological advancements which have insured reliability in chemical testing for blood-alcohol concentration. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

Subsection (e1) has effectively created a statutory exception to the hearsay rule. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

The statutory exception to the hearsay rule created by subsection (e1) of this section has as its basis the sound reasoning which gave rise to the business and public records exceptions to the hearsay rule. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

Subsection (e1) reflects a rationale which complies fully with historically recognized legitimate reasons for exceptions to the general rule against hearsay evidence. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

The scientific and technological advancements in breath analysis for alcohol concentration have removed the necessity for a subjective determination of impairment, so appropriate for cross-examination, and have increasingly removed the operator as a material element in the objective determination of blood-alcohol concentration. Indeed, the legislature's recognition of the reliable and accurate innovation of blood-alcohol concentration testing is manifested in § 20-138.1(a)(2) which now provides that a person who after having consumed sufficient alcohol that he has, at any relevant time after driving, an alcohol concentration of 0.10 or more commits the offense of impaired driving. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

The science of breath analysis for alcohol concentration has become increasingly reliable, increasingly less dependent on human skill of operation, and increasingly accepted as a means for measuring blood-alcohol concentration. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

State is not required to negate every possible flaw in testing procedure in order for the results of the chemical analysis to be admissible; it is only required that the State show compliance with the provisions of this section. State v. Bailey, 76 N.C. App. 610, 334 S.E.2d 266 (1985).

Chain of Custody of Evidence. — If all the evidence can reasonably support a conclusion that the blood sample analyzed is the same as that taken from the defendant then it is admissible into evidence. The fact that the defendant can show potential weak spots in the chain of custody only relates to the weight to be given the evidence establishing the chain of custody. State v. Bailey, 76 N.C. App. 610, 334 S.E.2d 266 (1985).

Applied in Byrd v. Wilkins, 69 N.C. App. 516, 317 S.E.2d 108 (1984); State v. Watts, 72 N.C. App. 661, 325 S.E.2d 505 (1985).

Quoted in State v. Lockamy, 65 N.C. App. 75, 308 S.E.2d 750 (1983).

Cited in In re Redwine, 312 N.C. 482, 322 S.E.2d 769 (1984); State v. Knoll, — N.C. App. —, 352 S.E.2d 463 (1987).

II. ADMINISTRATION AND USE OF BREATHALYZER TEST.

The result of a breathalyzer analysis is crucial to a conviction. State v. Smith, 312 N.C. 361, 323 S.E.2d 316 (1984).

This section requires two things, etc. —

In accord with 2nd paragraph in main volume. See State v. George, 77 N.C. App. 470, 336 S.E.2d 93 (1985), appeal dismissed and petition denied, 316 N.C. 197, 341 S.E.2d 581 (1986).

Time of Test Goes to Weight of Evidence. — The fact that three hours had passed from the time the defendant operated a vehicle until breathalyzer test was given went to the weight to be given the evidence, rather than its admissibility, and the breathalyzer evidence was properly admitted. State v. George, 77 N.C. App. 470, 336 S.E.2d 93 (1985), ap-

peal dismissed and petition denied, 316 N.C. 197, 341 S.E.2d 581 (1986).

Expression of Test Results in Terms of Breath or Blood. — Police officer who was issued a permit to perform chemical analysis under the authority of subsection (b) of this section by the Department of Human Resources was permitted by § 20-4.01(0.2) to express alcohol concentration in terms of 210 liters of breath, as well as 100 milliliters of blood. State v. Midgett, 78 N.C. App. 387, 337 S.E.2d 117 (1985).

Regulations Governing Second and Subsequent Samples. — Commission of Health Services operational procedure designating a specific time, namely, at the reappearance of the words "blow sample" on the machine for the collection of the second breath sample, met the requirements of subdivision (b)(1) of this section that Commission regulations provide time requirements as to the collection of second and subsequent samples. State v. Lockwood, 78 N.C. App. 205, 336 S.E.2d 678 (1985).

Higher of Two Analyses May Not Be Introduced. — Subdivision (b3)(3) of this section restricts the State from seeking to introduce into evidence the higher of two chemical analyses as proof of a defendant's alcohol concentration. State v. Harper, 82 N.C. App. 398, 346 S.E.2d 223 (1986).

Testimony as to Identical Sequential Tests Not Prejudicial. — While subdivision (b3)(3) of this section protects a defendant from a conviction based on the higher of two breathalyzer test results, it was not prejudical for the court to allow testimony that two breathalyzer tests were administered to defendant, where both breathalyzer test results were 0.12, and where defendant did not object or move to strike prior testimony that a sequential breathalyzer test was administered to him. State v. Harper, 82 N.C. App. 398, 346 S.E.2d 223 (1986).

Consecutively Administered Tests Requirement Met. — Where the time of the first reading was 11:15 a.m., and the time of the second reading was 11:26 a.m., and because these readings were taken from "consecutively administered tests" on adequate breath samples given within 11 minutes of one another and the readings were within .01 of one another, the requirement of sequential testing was complied with, despite the fact that between the time of these two readings defendant had given two insufficient breath samples. State v. White, 84 N.C. App. 111, 351 S.E.2d 828, cert. denied, — N.C. —, 353 S.E.2d 404 (1987).

OPINIONS OF ATTORNEY GENERAL

Subsection (a) does not require that defendant's alcohol concentration be expressed in "grams per 100 milliliters of blood" or "grams per 210 liters of breath" in order for the results to be admissible in evidence. See opinion of Attorney General to Mr. Joel H. Brewer, Assistant District Attorney, Ninth Judicial District, 54 N.C.A.G. 93 (1985).

§ 20-140. Reckless driving.

(a) Any person who drives any vehicle upon a highway or any public vehicular area carelessly and heedlessly in willful or wanton disregard of the rights or safety of others shall be guilty of reckless driving.

(b) Any person who drives any vehicle upon a highway or any public vehicular area without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving.

(c) Repealed by Session Laws 1983, c. 435, s. 23, effective October 1, 1983.

(d) Reckless driving as defined in subsections (a) and (b) is a misdemeanor, punishable by imprisonment not to exceed six months or a fine not to exceed five hundred dollars ($500.00), or both a fine and imprisonment.

(e) Repealed by Session Laws 1983, c. 435, s. 23, effective October 1, 1983. (1937, c. 407, s. 102; 1957, c. 1368, s. 1; 1959, c. 1264, s. 8; 1973, c. 1330, s. 3; 1979, c. 903, ss. 7, 8; 1981, c. 412, s. 4; c. 466, s. 7; c. 747, s. 66; 1983, c. 435, s. 23; 1985, c. 764, s. 28.)

Editor's Note. —

Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense."

Effect of Amendments. —

The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, rewrote subsection (d), which read "Any person convicted of violating subsection (a) or subsection (b) of this section shall be punished by imprisonment not to exceed six months or by a fine not to exceed five hundred dollars ($500.00) or by both such imprisonment and fine, in the discretion of the court."

CASE NOTES

I. IN GENERAL.

Stated in State v. Hefler, 310 N.C. 135, 310 S.E.2d 310 (1984).

Cited in State v. McGill, 73 N.C. App. 206, 326 S.E.2d 345 (1985); State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985); State v. Graves, 83 N.C. App. 126, 349 S.E.2d 320 (1986).

§ 20-140.3. Unlawful use of National System of Interstate and Defense Highways and other controlled-access highways.

CASE NOTES

Applied in Oakes v. James, 68 N.C. App. 765, 315 S.E.2d 802 (1984).

Cited in State v. Dixon, 77 N.C. App. 27, 334 S.E.2d 433 (1985).

§ 20-141. Speed restrictions.

(a) No person shall drive a vehicle on a highway or in a public vehicular area at a speed greater than is reasonable and prudent under the conditions then existing.

(b) Except as otherwise provided in this Chapter, it shall be unlawful to operate a vehicle in excess of the following speeds:

(1) Thirty-five miles per hour inside municipal corporate limits for all vehicles.

(2) Fifty-five miles per hour outside municipal corporate limits for all vehicles, except on rural Interstate Highways where the speed limit has been raised pursuant to G.S. 20-141(d)(2), and except for school buses and school activity buses.

(c) Except while towing another vehicle, or when an advisory safe-speed sign indicates a slower speed, or as otherwise provided by law, it shall be unlawful to operate a passenger vehicle upon the interstate and primary highway system at less than the following speeds:

(1) Forty miles per hour in a speed zone of 55 miles per hour.

(2) Forty-five miles per hour in a speed zone of 60 miles per hour or greater.

These minimum speeds shall be effective only when appropriate signs are posted indicating the minimum speed.

(d) (1) Whenever the Department of Transportation determines on the basis of an engineering and traffic investigation that any speed allowed by subsection (b) is greater than is reasonable and safe under the conditions found to exist upon any part of a highway outside the corporate limits of a municipality or upon any part of a highway designated as part of the Interstate Highway System or other controlled-access highway (either inside or outside the corporate limits of a municipality), the Department of Transportation shall determine and declare a reasonable and safe speed limit.

(2) Whenever the Department of Transportation determines on the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe under the conditions found to exist upon any part of a highway designated as part of the Interstate Highway System or other controlled-access highway (either inside or outside the corporate limits of a municipality) the Department of Transportation shall determine and declare a reasonable and safe speed limit. A speed limit set pursuant to this subsection may not exceed 70 miles per hour. The Department of Transportation shall set the speed limit not to exceed that allowed by applicable Federal law on any part of the Interstate Highway System that they deem to be safe.

Speed limits set pursuant to this subsection are not effective until appropriate signs giving notice thereof are erected upon the parts of the highway affected.

(e) Local authorities, in their respective jurisdictions, may authorize by ordinance higher speeds or lower speeds than those set out in subsection (b) upon all streets which are not part of the State highway system; but no speed so fixed shall authorize a speed in excess of 55 miles per hour. Speed limits set pursuant to this subsection shall be effective when appropriate signs giving notice thereof are erected upon the part of the streets affected.

(f) Whenever local authorities within their respective jurisdictions determine upon the basis of an engineering and traffic investigation that a higher maximum speed than those set forth in subsection (b) is reasonable and safe, or that any speed hereinbefore set forth is greater than is reasonable and safe, under the conditions found to exist upon any part of a street within the corporate limits of a municipality and which street is a part of the State highway system (except those highways designated as part of the interstate highway system or other controlled-access highway) said local authorities shall determine and declare a safe and reasonable speed limit. A speed limit set pursuant to this subsection may not exceed 55 miles per hour. Limits set pursuant to this subsection shall become effective when the Department of Transportation has passed a concurring ordinance and signs are erected giving notice of the authorized speed limit.

The Department of Transportation is authorized to raise or lower the statutory speed limit on all highways on the State highway system within municipalities which do not have a governing body to enact municipal ordinances as provided by law. The Department

of Transportation shall determine a reasonable and safe speed limit in the same manner as is provided in G.S. 20-141(d)(1) and G.S. 20-141(d)(2) for changing the speed limits outside of municipalities, without action of the municipality.

(g) Whenever the Department of Transportation or local authorities within their respective jurisdictions determine on the basis of an engineering and traffic investigation that slow speeds on any part of a highway considerably impede the normal and reasonable movement of traffic, the Department of Transportation or such local authority may determine and declare a minimum speed below which no person shall operate a motor vehicle except when necessary for safe operation in compliance with law. Such minimum speed limit shall be effective when appropriate signs giving notice thereof are erected on said part of the highway. Provided, such minimum speed limit shall be effective as to those highways and streets within the corporate limits of a municipality which are on the State highway system only when ordinances adopting the minimum speed limit are passed and concurred in by both the Department of Transportation and the local authorities. The provisions of this subsection shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(h) No person shall operate a motor vehicle on the highway at such a slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law; provided, this provision shall not apply to farm tractors and other motor vehicles operating at reasonable speeds for the type and nature of such vehicles.

(i) The Department of Transportation shall have authority to designate and appropriately mark certain highways of the State as truck routes.

(j) Any person convicted of violating this section by operating a vehicle on a street or highway in excess of 55 miles per hour and at least 15 miles per hour over the legal limit while fleeing or attempting to elude arrest or apprehension by a law-enforcement officer with authority to enforce the motor vehicle laws is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) or imprisonment for not more than two years, or both, in the discretion of the court.

(j1) It is a misdemeanor punishable as provided in G.S. 20-176 for a person to drive a vehicle on a highway at a speed that is more than 15 miles per hour more than the speed limit established by law for the highway where the offense occurred.

(k) The maximum speed limit on any public highway within the State of North Carolina shall not exceed 55 miles per hour except for those portions of the Interstate Highway System where the Department of Transportation sets a higher speed limit pursuant to subdivision (d)(2) of this section.

(*l*) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, including municipal charters, any speed limit on any portion of the public highways within the jurisdiction of this State shall be uniformly applicable to all types of motor vehicles using such portion of the highway, if on November 1, 1973, such portion of the highway had a speed limit which was uniformly applicable to all types of motor vehicles using

it. Provided, however, that a lower speed limit may be established for any vehicle operating under a special permit because of any weight or dimension of such vehicle, including any load thereon. The requirement for a uniform speed limit hereunder shall not apply to any portion of the highway during such time as the condition of the highway, weather, an accident, or other condition creates a temporary hazard to the safety of traffic on such portion of the highway.

(m) The fact that the speed of a vehicle is lower than the foregoing limits shall not relieve the operator of a vehicle from the duty to decrease speed as may be necessary to avoid colliding with any person, vehicle or other conveyance on or entering the highway, and to avoid injury to any person or property.

(n) Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, the failure of a motorist to stop his vehicle within the radius of its headlights or the range of his vision shall not be held negligence per se or contributory negligence per se. (1937, c. 297, s. 2; c. 407, s. 103; 1939, c. 275; 1941, c. 347; 1947, c. 1067, s. 17; 1949, c. 947, s. 1; 1953, c. 1145; 1955, c. 398; c. 555, ss. 1, 2; c. 1042; 1957, c. 65, s. 11; c. 214; 1959, c. 640; c. 1264, s. 10; 1961, cc. 99, 1147; 1963, cc. 134, 456, 949; 1967, c. 106; 1971, c. 79, ss. 1-3; 1973, c. 507, s. 5; c. 1330, s. 7; 1975, c. 225; 1977, c. 367; c. 464, s. 34; c. 470; 1983, c. 131; 1985, c. 764, ss. 29, 30; 1987, c. 164.)

Editor's Note. — Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense."

Effect of Amendments. —

The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, inserted "is guilty of a misdemeanor and" near the middle of subsection (j) and added new subsection (j1).

The 1987 amendment, effective May 8, 1987, inserted "except on rural Interstate Highways where the speed limit has been raised pursuant to G.S. 20-141(d)(2), and" and inserted "for" preceding "school buses" in subdivision (b)(2); inserted the final sentence of the first paragraph of subdivision (d)(2); and rewrote subsection (k), which read "Notwithstanding any other provision contained in G.S. 20-141 or any other statute or law of this State, the maximum speed limit on any public highway within the State of North Carolina shall not exceed 55 miles per hour."

CASE NOTES

I. IN GENERAL.

Applied in Murdock v. Ratliff, 310 N.C. 652, 314 S.E.2d 518 (1984).

Stated in State v. Hefler, 310 N.C. 135, 310 S.E.2d 310 (1984).

Cited in State v. Jones, 63 N.C. App. 411, 305 S.E.2d 221 (1983); State v. Scott, 71 N.C. App. 570, 322 S.E.2d 613 (1984); State v. McGill, 73 N.C. App. 206, 326 S.E.2d 345 (1985).

II. STANDARD OF CARE AND NEGLIGENCE.

And a motorist may not lawfully, etc. —

Violation of the standard of care required by subsection (h) of this section is negligence per se. Murdock v. Ratliff, 63 N.C. App. 306, 305 S.E.2d 48 (1983), rev'd on other grounds, 310 N.C. 652, 314 S.E.2d 518 (1984).

Subsections (g) and (m) of this section,

construed together, establish a duty to drive with caution and circumspection and to reduce speed if necessary to avoid a collision, irrespective of the lawful speed limit or the speed actually driven. State v. Stroud, 78 N.C. App. 599, 337 S.E.2d 873 (1985).

Driving below the speed limit is not a defense to a charge of driving at a speed greater than is reasonable and prudent under existing conditions; regardless of the posted speed limit, motorists have a duty to decrease speed if necessary to avoid a collision. State v. Stroud, 78 N.C. App. 599, 337 S.E.2d 873 (1985).

Nor Is Inablility to Stop within Range of Vision. —

No universal absolute rule may be applied to the question of whether a motorist is contributorily negligent as a matter of law by proceeding when his or her vision becomes obscured by conditions on the highway; the conduct of each motorist must be evaluated in the light of the unique factors and circumstances with which he or she is confronted. Only in the clearest cases should a failure to stop completely be held to be negligence as a matter of law. Allen v. Pullen, 82 N.C. App. 61, 345 S.E.2d 469 (1986), cert. denied, 318 N.C. 691, 351 S.E.2d 738 (1987).

Defendant's failure to stop her vehicle within the range of her vision when confronted by a cloud of dust was not contributory negligence per se, and under the circumstances, where her vision was suddenly obscured, the question of her speed was properly one for the jury. Allen v. Pullen, 82 N.C. App. 61, 345 S.E.2d 469 (1986), cert. denied, 318 N.C. 691, 351 S.E.2d 738 (1987).

III. EVIDENCE.

Evidence Held Sufficient for Submission, etc. —

Evidence that defendant, while operating an automobile under hazardous conditions, perceived an automobile in her lane of travel, but that despite "slamming" on her brakes she was unable to maintain control of her automobile and slid into the rear end of the automobile in front of her was sufficient to submit the issue for determination by the jury. Masciulli v. Tucker, 82 N.C. App. 200, 346 S.E.2d 305 (1986).

IV. INSTRUCTIONS.

Instruction of doctrine of sudden emergency held error under the evidence. Masciulli v. Tucker, 82 N.C. App. 200, 346 S.E.2d 305 (1986).

OPINIONS OF ATTORNEY GENERAL

Subsection (e) of this section specifically authorizes the municipal corporation to set a speed limit of less than 35 miles per hour on streets within the municipality which are not part of the State highway system. See opinion of Attorney General to Mr. Robert M. Bennett, City Engineer, City of Fayetteville, 54 N.C.A.G. 65 (1985).

§ 20-141.3. Unlawful racing on streets and highways.

CASE NOTES

Violation of the racing statute is negligent per se. —

A violation of subsection (b) of this section is negligence per se. Lewis v. Brunston, 78 N.C. App. 678, 338 S.E.2d 595 (1986).

Violation as Wilful or Wanton Negligence. — A violation of subsection (b) of this section constitutes wilful or wanton negligence. Lewis v. Brunston, 78 N.C. App. 678, 338 S.E.2d 595 (1986).

Proximate Cause of Collision. — Evidence showing that about one-half mile before and immediately prior to the accident defendants were driving their cars at night "bumper to bumper" at speeds of 75 to 80 m.p.h. on road where the speed limit was 45 m.p.h., if believed by the jury, was sufficient to support a finding by the jury that defendants operated their cars wilfully in speed competition in violation of subsection (b) of this section and that their negligence in this respect proximately caused collision. Lewis v. Brunston, 78 N.C. App. 678, 338 S.E.2d 595 (1986).

The trial court did not err in failing to charge the jury on the issue of whether or not the defendant engaged in a willful speed competition, where there

was no evidence that the defendant purposely and deliberately engaged in a race. Hord v. Atkinson, 68 N.C. App. 346, 315 S.E.2d 339 (1984).

Stated in State v. Triplett, 70 N.C. App. 341, 318 S.E.2d 913 (1984).

§ 20-141.4. Felony and misdemeanor death by vehicle.

CASE NOTES

Defendant May Assert Intervening Negligence of Another. — A defendant charged with death by vehicle under this section may assert the intervening negligence of another as a defense. State v. Tioran, 65 N.C. App. 122, 308 S.E.2d 659 (1983).

Cited in State v. Howard, 70 N.C. App. 487, 320 S.E.2d 17 (1984); State v. Stroud, 78 N.C. App. 599, 337 S.E.2d 873 (1985).

§ 20-143.1. Certain vehicles must stop at railroad grade crossings.

(b) Except for school buses, the provisions of this section shall not require the driver of a vehicle to stop:

(1) At railroad tracks used exclusively for industrial switching purposes within a business district.

(2) At a railroad grade crossing which a police officer or crossing flagman directs traffic to proceed.

(3) At a railroad grade crossing protected by a gate or flashing signal designed to stop traffic upon the approach of a train, when such gate or flashing signal does not indicate the approach of a train.

(4) At an abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned.

(5) At an industrial or spur line railroad grade crossing marked with a sign reading "Exempt," which sign has been erected by or with the consent of the appropriate State or local authority.

(c) "Dangerous article" shall mean any flammable liquids, flammable solids, oxidizing materials, corrosive liquids, compressed gases, poisonous substances or radioactive materials as hereinafter defined.

(1) "Flammable liquids" shall mean any liquid having a flash point below 100° F as determined by Tag Closed Tester method.

(2) "Flammable solids" shall mean any solid substance which is liable, under conditions incident to transportation, to cause fires through friction, through absorption of moisture, through spontaneous chemical changes, or as a result of retained heat from its manufacturing or processing.

(3) "Oxidizing materials" shall mean any substance such as chlorate, permanganate, peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter.

(4) "Corrosive liquids" shall mean those acids, alkaline caustic liquids and other corrosive liquids which, when in contact with living tissue, will cause severe damage of such tissue

by chemical action, or in case of leakage, will materially damage or destroy other freight by chemical action, or are liable to cause fire when in contact with organic matter or with certain chemicals.

(5) "Compressed gas" shall mean any material or mixture having in the container either an absolute pressure exceeding 40 pounds per square inch at 70 degrees F., or an absolute pressure exceeding 104 pounds per square inch at 130 degrees F., or both, or any liquid flammable material having a Reid vapor pressure exceeding 40 pounds per square inch absolute at 100 degrees F.

(6) "Poisonous substances" shall mean liquids and gases of such nature that a very small amount of the gas or vapor of the liquid mixed with air is dangerous to life, or such liquid or solid substance as, upon contact with fire or when exposed to air, gives off dangerous or intensely irritating fumes or substances, which are chiefly dangerous by external contact with the body or by being taken internally.

(7) "Radioactive materials" shall mean any material or combination of materials that spontaneously emits ionizing radiation.

(e) The provisions of this section shall not apply to taxicabs nor to vehicles subject to the rules and regulations adopted by the North Carolina Division of Motor Vehicles and the United States Department of Transportation. (1969, c. 1231, s. 2; 1973, c. 1330, s. 12; 1981, c. 98; 1983, c. 254; 1985, c. 454, ss. 3, 4; 1987, c. 126.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. —

The 1985 amendment, effective June 24, 1985, rewrote subdivision (c)(1), which formerly read "'Flammable liquids' shall mean any liquid which gives off flammable vapors, (as determined by flash point from Tagliabue's open-cup tester as used for test of burning oil) at or below a temperature of 80 degrees F," and substituted "Division of Motor Vehicles" for "Utilities Commission" in subsection (e).

The 1987 amendment, effective May 4, 1987, substituted "'Exempt'" for "'Exempt Crossing'" in subdivision (b)(5).

§ 20-145. When speed limit not applicable.

The speed limitations set forth in this Article shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons charged with or suspected of any such violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances and resuce squad emergency service vehicles when traveling in emergencies, nor to vehicles operated by county fire marshals and civil preparedness coordinators when traveling in the performances of their duties. This exemption shall not, however, protect the driver of any such vehicle from the consequence of a reckless disregard of the safety of others. (1937, c. 407, s. 107; 1947, c. 987; 1971, c. 5; 1977, c. 52, s. 3; 1985, c. 454, s. 5.)

Effect of Amendments. — The 1985 amendment, effective June 24, 1985, deleted "nor to vehicles operated by the duly authorized officers, agents and employees of the North Carolina Utilities Commission when traveling in performance of their duties in regulating and checking the traffic and speed of buses,

trucks, motor vehicles and motor vehicle carriers subject to the regulations and jurisdiction of the North Carolina Utilities Commission" at the end of the first sentence.

CASE NOTES

Standard of Care, etc. — For discussion of the action a reasonable man, who is serving as a member of the North Carolina state highway patrol should take when he tries to stop a motor vehicle for following too closely and the driver of the vehicle does not stop. McMillan v. Newton, 63 N.C. App. 751, 306 S.E.2d 470, cert. denied, 309 N.C. 821, 310 S.E.2d 350 (1983).

§ 20-146. Drive on right side of highway; exceptions.

(a) Upon all [highways] of sufficient width a vehicle shall be driven upon the right half of the highway except as follows:

(1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement;

(2) When an obstruction exists making it necessary to drive to the left of the center of the highway; provided, any person so doing shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within such distance as to constitute an immediate hazard;

(3) Upon a highway divided into three marked lanes for traffic under the rules applicable thereon; or

(4) Upon a highway designated and signposted for one-way traffic.

(b) Upon all highways any vehicle proceeding at less than the legal maximum speed limit shall be driven in the right-hand lane then available for thru traffic, or as close as practicable to the right-hand curb or edge of the highway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn.

(c) Upon any highway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the centerline of the highway, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the highway for use by traffic not otherwise permitted to use such lanes or except as permitted under subsection (a)(2) hereof.

(d) Whenever any street has been divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent herewith shall apply.

(1) A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

(2) Upon a street which is divided into three or more lanes and provides for the two-way movement of traffic, a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance, or in the preparation for making a left turn

or where such center lane is at the time allocated exclusively to traffic moving in the same direction that the vehicle is proceeding and such allocation is designated by official traffic-control device.

(3) Official traffic-control devices may be erected directing specified traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the street and drivers of vehicles shall obey the direction of every such device.

(4) Official traffic-control devices may be installed prohibiting the changing of lanes on sections of streets, and drivers of vehicles shall obey the directions of every such device.

(e) Notwithstanding any other provisions of this section, when appropriate signs have been posted, it shall be unlawful for any person to operate a motor vehicle over and upon the inside lane, next to the median of any dual-lane highway at a speed less than the posted speed limit when the operation of said motor vehicle over and upon said inside lane shall impede the steady flow of traffic except when preparing for a left turn. "Appropriate signs" as used herein shall be construed as including "Slower Traffic Keep Right" or designations of similar import. (1937, c. 407, s. 108; 1965, c. 678, s. 2; 1973, c. 1330, s. 3; 1975, c. 593; 1985, c. 764, s. 25.)

Editor's Note. — Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense."

Effect of Amendments. — The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, deleted the last sentence of subsection (e), which read "Any person violating the provisions of this section shall be guilty of a misdemeanor punishable as provided in G.S. 20-176."

CASE NOTES

Applied in Belk v. Peters, 63 N.C. App. 196, 303 S.E.2d 641 (1983).

§ 20-146.2. Rush hour traffic lanes authorized.

(a) The Department of Transportation may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets and highways on the State Highway System and cities may designate one or more travel lanes as high occupancy vehicle (HOV) lanes on streets on the Municipal Street System. HOV lanes shall be reserved for vehicles with a specified number of passengers as determined by the Department of Transportation or the city having jurisdiction over the street or highway. When HOV lanes have been designated, and have been appropriately marked with signs or other markers, they shall be reserved for privately or publicly operated buses, and automobiles or other vehicles containing the specified number of persons.

(b) The Department of Transportation may modify, upgrade, and designate shoulders of controlled access facilities and partially controlled access facilities as temporary travel lanes during peak traffic periods. When these shoulders have been appropriately marked,

it shall be unlawful to use these shoulders for stopping or emergency parking. Emergency parking areas shall be designated at other appropriate areas, off these shoulders, when available.

(c) The Department of Transportation may designate travel lanes for the directional flow of peak traffic on streets and highways on the State Highway System and cities may designate travel lanes for the directional flow of peak traffic on streets on the Municipal Street System. These travel lanes may be designated for time periods by the agency controlling the streets and highways. (1987, c. 547, s. 1.)

Editor's Note. — Session Laws 1987, c. 547, s. 2 makes this section effective upon ratification. The act was ratified July 3, 1987.

§ 20-149. Overtaking a vehicle.

CASE NOTES

As to duty of driver, etc. — There is no statutory requirement that a driver sound his horn when he begins to pass; thus, a driver's failure to sound his horn does not constitute negligence per se; rather, he is subject to the common-law duty to use reasonable care. Perry v. Aycock, 68 N.C. App. 705, 315 S.E.2d 791 (1984).

Absent a statutory requirement, a motorist is only required to sound his horn when reasonably necessary to give warning. Perry v. Aycock, 68 N.C. App. 705, 315 S.E.2d 791 (1984).

§ 20-150. Limitations on privilege of overtaking and passing.

CASE NOTES

I. IN GENERAL.

Applied in Belk v. Peters, 63 N.C. App. 196, 303 S.E.2d 641 (1983).

II. PASSING AT RAILWAY GRADE CROSSINGS OR INTERSECTIONS.

Editor's Note. — The second paragraph under analysis line II, Passing at Railway Grade Crossings or Intersections, in the main volume, should read:

A private driveway is not an intersecting highway within the meaning of subsection (c) of this section. Levy v. Carolina Aluminum Co., 232 N.C. 158, 59 S.E.2d 632 (1950); Farmers Oil Co. v. Miller, 264 N.C. 101, 141 S.E.2d 41 (1965).

§ 20-151. Driver to give way to overtaking vehicle.

CASE NOTES

The trial judge did not err in failing to charge the jury on the defendant's failure to yield to an overtaking vehicle, where there was no evidence presented that indicated that the other driver ever attempted to pass or to overtake the defendant once car chase had begun. Hord v. Atkinson, 68 N.C. App. 346, 315 S.E.2d 339 (1984).

§ 20-152. Following too closely.

CASE NOTES

Certain Inferences Are Permitted, etc. —

Admission of defendant that his car collided with the rear of plaintiff's car permitted a legitimate inference by a jury that defendant was following plaintiff's automobile more closely than was reasonable and prudent, in violation of this section. Scher v. Antonucci, 77 N.C. App. 810, 336 S.E.2d 434 (1985).

But Mere Proof of Collision, etc. —

In accord with the main volume. See Scher v. Antonucci, 77 N.C. App. 810, 336 S.E.2d 434 (1985).

A violation of this section is negligence per se. —

In accord with 1st paragraph in main volume. See Scher v. Antonucci, 77 N.C. App. 810, 336 S.E.2d 434 (1985).

Instruction Required. — Where violation of this section bore directly on the issue of defendant's negligence, which was a substantial feature of the case, the court should have declared and explained the section in its charge to the jury, and should also have explained that violation of this section was negligence per se. The court had this duty irrespective of plaintiff's request for special instructions. Scher v. Antonucci, 77 N.C. App. 810, 336 S.E.2d 434 (1985).

Cited in State v. McGill, 73 N.C. App. 206, 326 S.E.2d 345 (1985).

§ 20-154. Signals on starting, stopping or turning.

(a) The driver of any vehicle upon a highway or public vehicular area before starting, stopping or turning from a direct line shall first see that such movement can be made in safety, and if any pedestrian may be affected by such movement shall give a clearly audible signal by sounding the horn, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal as required in this section, plainly visible to the driver of such other vehicle, of the intention to make such movement. The driver of a vehicle shall not back the same unless such movement can be made with safety and without interfering with other traffic.

(1937, c. 407, s. 116; 1949, c. 1016, s. 1; 1951, cc. 293, 360; 1955, c. 1157, s. 9; 1957, c. 488, s. 2; 1965, c. 768; 1973, c. 1330, s. 19; 1975, c. 716, s. 5; 1981, c. 599, s. 4; 1985, c. 96.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective October 1, 1985, inserted "or public vehicular area" near the beginning of the first sentence of subsection (a).

CASE NOTES

I. IN GENERAL.

Applied in Perry v. Aycock, 68 N.C. App. 705, 315 S.E.2d 791 (1984).

II. NEGLIGENCE AND PROXIMATE CAUSE.

Factor In Determining Breach of Duty of Reasonable Care. — Although subsection (d) of this section provides that the violation of this section is not negligence per se, a violation of subsection (a) of this section may be considered along with all other facts and circumstances in determining whether defendant driver breached duty of exercising ordinary, reasonable care. Phillips v. United States, 650 F. Supp. 114 (W.D.N.C. 1986).

§ 20-156. Exceptions to the right-of-way rule.

(b) The driver of a vehicle upon the highway shall yield the right-of-way to police and fire department vehicles and public and private ambulances, vehicles designed, equipped and used exclusively for the transportation of human tissues and organs for transplantation and to rescue squad emergency service vehicles and vehicles operated by county fire marshals and civil preparedness coordinators when the operators of said vehicles are giving a warning signal by appropriate light and by bell, siren or exhaust whistle audible under normal conditions from a distance not less than 1,000 feet. When appropriate warning signals are being given, as provided in this subsection, an emergency vehicle may proceed through an intersection or other place when the emergency vehicle is facing a stop sign, a yield sign, or a traffic light which is emitting a flashing strobe signal or a beam of steady or flashing red light. This provision shall not operate to relieve the driver of a police or fire department vehicle or public or private ambulance or vehicles designed, equipped and used exclusively for the transportation of human tissues and organs for transplantation or rescue squad emergency service vehicle or county fire marshals or civil preparedness coordinators from the duty to drive with due regard for the safety of all persons using the highway, nor shall it protect the driver of any such vehicle or county fire marshal or civil preparedness coordinator from the consequence of any arbitrary exercise of such right-of-way. (1937, c. 407, s. 118; 1971, cc. 78, 106; 1973, c. 1330, s. 21; 1977, c. 52, s. 4; c. 438, s. 3; 1985, c. 427.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective October 1, 1985, added the present second sentence of subsection (b).

§ 20-157. Approach of police, fire department or rescue squad vehicles or ambulances; driving over fire hose or blocking fire-fighting equipment; parking, etc., near police, fire department, or rescue squad vehicle or ambulance.

(a) Upon the approach of any police or fire department vehicle or public or private ambulance or rescue squad emergency service vehicle giving warning signal by appropriate light and by audible bell, siren or exhaust whistle, audible under normal conditions from a distance not less than 1000 feet, the driver of every other vehicle shall immediately drive the same to a position as near as possible and parallel to the right-hand edge or curb, clear of any intersection of streets or highways, and shall stop and remain in such position unless otherwise directed by a police or traffic officer until police or fire department vehicle or public or private ambulance or resuce squad emergency service vehicle shall have passed. Provided, however, this subsection shall not apply to vehicles traveling in the opposite direction of the vehicles herein enumerated when traveling on a four-lane limited access highway with a me-

dian divider dividing the highway for vehicles traveling in opposite directions, and provided further that the violation of this subsection shall not be negligence per se. Violation of this subsection is a misdemeanor punishable as provided by G.S. 20-176.

(b) It shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than one block or to drive into or park such vehicle within one block where fire apparatus has stopped in answer to a fire alarm.

(c) Outside of the corporate limits of any city or town it shall be unlawful for the driver of any vehicle other than one on official business to follow any fire apparatus traveling in response to a fire alarm closer than 400 feet or to drive into or park such vehicle within a space of 400 feet from where fire apparatus has stopped in answer to a fire alarm.

(d) It shall be unlawful to drive a motor vehicle over a fire hose or any other equipment that is being used at a fire at any time, or to block a fire-fighting apparatus or any other equipment from its source of supply regardless of its distance from the fire.

(e) It shall be unlawful for the driver of a vehicle, other than one on official business, to park and leave standing such vehicle within 100 feet of police or fire department vehicles, public or private ambulances, or rescue squad emergency vehicles which are engaged in the investigation of an accident or engaged in rendering assistance to victims of such accident. (1937, c. 407, s. 119; 1955, cc. 173, 744; 1971, c. 366, ss. 1, 2; 1985, c. 764, s. 31.)

Editor's Note. — Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense."

Effect of Amendments. — The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, added the last sentence of subsection (a).

CASE NOTES

Quoted in State v. Davis, 68 N.C. App. 238, 314 S.E.2d 828 (1984).

§ 20-158. Vehicle control signs and signals.

Local Modification. — Currituck: 1985, c. 288.

CASE NOTES

I. IN GENERAL.

The automobile driver on a dominant highway approaching an intersecting servient highway is not under a duty to anticipate that the automobile driver on the servient highway will fail to stop as required by statute, and in the absence of anything which gives or should give notice to the contrary, he will be entitled to assume and to act upon the assumption, even to the last moment, that the automobile driver on the servient highway will obey the law and stop before entering the dominant highway. Lewis v. Brunston, 78 N.C. App. 68, 338 S.E.2d 595 (1986).

The automobile driver on the ser-

vient intersecting highway is not under a duty to anticipate that the automobile driver on the dominant highway, approaching the intersection of the two highways, will fail to observe the speed regulations and the rules of the road, and in the absence of anything which gives or should give notice to the contrary, he is entitled to assume and to act upon the assumption that the automobile driver on the dominant highway will obey such regulations and the rules of the road. Lewis v. Brunston, 78 N.C. App. 68, 338 S.E.2d 595 (1986).

Evidence of Wanton Conduct Held Sufficient to Go To Jury. — In a negligence action, the evidence of the defendant's wanton conduct was sufficient to go to the jury, where defendant admitted: Awareness of her own substantial intoxication, indifference to her duty under § 20-138.1 to avoid operating a motor vehicle while impaired, and obliviousness to the duty under this section to stop at the five stoplights between the cocktail lounge and the accident. It was for the jury to determine whether defendant's negligence evinced a wilful or reckless indifference to the rights of others, and then, whether her wilful or wanton conduct was the proximate cause of the accident. King v. Allred, 76 N.C. App. 427, 333 S.E.2d 758, cert. denied, 315 N.C. 184, 337 S.E.2d 857 (1985).

Cited in State v. Jones, 63 N.C. App. 411, 305 S.E.2d 221 (1983); State v. Field, 75 N.C. App. 627, 331 S.E.2d 221 (1985).

§ 20-161. Stopping on highway prohibited; warning signals; removal of vehicles from public highway.

(c) The operator of any truck, truck tractor, trailer or semitrailer which is disabled upon any portion of the highway shall display warning devices of a type and in a manner as required under the rules and regulations of the United States Department of Transportation as adopted by the Division of Motor Vehicles. Such warning devices shall be displayed as long as the vehicle is disabled.

(1937, c. 407, s. 123; 1951, c. 1165, s. 1; 1971, c. 294, s. 1; 1973, c. 1330, s. 25; 1985, c. 454, s. 6.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective June 24, 1985, rewrote subsection (c), relating to the display of warning signals.

CASE NOTES

I. IN GENERAL.

Editor's Note. — The cases under the catchline **Section Inapplicable to Parking in a Residential or Business District** in the main volume should be deleted.

To "park" means something more, etc. —

In accord with 1st paragraph in original. See Adams v. Mills, 68 N.C. App. 256, 314 S.E.2d 589, rev'd on other grounds, 312 N.C. 181, 322 S.E.2d 164 (1984).

Negligence Instruction. — Where defendant offered no evidence that plaintiff's actions constituted negligence in violation of subsection (a) of this section or with regard to any other standard of care, the trial judge was not obligated to charge the jury on contributory negligence or to submit it as an issue to them. Adams v. Mills, 68 N.C. App. 256, 314 S.E.2d 589, rev'd on other grounds, 312 N.C. 181, 322 S.E.2d 164 (1984).

Applied in King v. Allred, 309 N.C. 113, 305 S.E.2d 554 (1983); State v. Gooden, 65 N.C. App. 669, 309 S.E.2d 707 (1983); Sizemore v. Raxter, 73 N.C. App. 531, 327 S.E.2d 258 (1985).

II. DISABLED VEHICLES.

Emergency Parking on Shoulder. —

This section does not prohibit the emergency parking of a vehicle on the

shoulder of a highway where no part of the vehicle extends into the main traveled portion of the highway. Adams v. Mills, 312 N.C. 181, 322 S.E.2d 164 (1984).

As Is Question of Disablement. — In accord with original. See Adams v. Mills, 312 N.C. 181, 322 S.E.2d 164 (1984).

IV. NEGLIGENCE AND PROXIMATE CAUSE.

Violation of this section, etc. — In accord with 1st paragraph in original. See Clark v. Moore, 65 N.C. App. 609, 309 S.E.2d 579 (1983); Adams v. Mills, 312 N.C. 181, 322 S.E.2d 164 (1984).

To Be Actionable, etc. — In accord with 1st paragraph in bound volume. See Adams v. Mills, 312 N.C. 181, 322 S.E.2d 164 (1984).

Proximate Cause, etc. — In accord with 1st paragraph in original. See Clark v. Moore, 65 N.C. App. 609, 309 S.E.2d 579 (1983).

Evidence of Negligence Held Sufficient to Go to Jury. — Where defendant's truck, which was not disabled, was parked on the shoulder of a much-traveled, two-lane highway, and though the shoulder was wide enough with room to spare to accommodate the truck, part of it extended into the main-traveled portion of the highway far enough so that cars could not pass the truck without going into the other traffic lane, this was evidence enough of defendant's negligence and the issue was for the jury to determine, rather than the court. Wilkins v. Taylor, 76 N.C. App. 536, 333 S.E.2d 503 (1985).

§ 20-161.1. Regulation of night parking on highways.

CASE NOTES

Applicability of Section. — Section 20-168(b) makes this section, which prohibits bright lights on standing vehicles at night, inapplicable to street maintenance workers actually performing their duties. Pinkston v. Connor, 63 N.C. App. 628, 306 S.E.2d 132 (1983), aff'd, 310 N.C. 148, 310 S.E.2d 347 (1984).

§ 20-162. Parking in front of private driveway, fire hydrant, fire station, intersection of curb lines or fire lane.

Local Modification. — City of Wilson: 1985, c. 137; Town of Tarboro: 1985 (Reg. Sess., 1986), c. 905, s. 2.

CASE NOTES

Applied in Sizemore v. Raxter, 73 N.C. App. 531, 327 S.E.2d 258 (1985).

§ 20-162.1. Prima facie rule of evidence for enforcement of parking regulations.

(a) Whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found upon any street, alley or other public place contrary to and in violation of the provisions of any statute or of any municipal ordinance limiting the time during which any such vehicle may be parked or prohibiting or otherwise regulating the parking of any such vehicle, it shall be prima facie evidence in any court in the State of North Carolina

that such vehicle was parked and left upon such street, alley or public way or place by the person, firm or corporation in whose name such vehicle is then registered and licensed according to the records of the department or agency of the State of North Carolina, by whatever name designated, which is empowered to register such vehicles and to issue licenses for their operation upon the streets and highways of this State; provided, that no evidence tendered or presented under the authorization contained in this section shall be admissible or competent in any respect in any court or tribunal, except in cases concerned solely with violation of statutes or ordinances limiting, prohibiting or otherwise regulating the parking of automobiles or other vehicles upon public streets, highways, or other public places.

Any person found responsible for an infraction pursuant to this section shall be subject to a penalty of not more than five dollars ($5.00).

(b) The prima facie rule of evidence established by subsection (a) shall not apply to the registered owner of a leased or rented vehicle parked in violation of law when said owner can furnish sworn evidence that the vehicle was, at the time of the parking violation, leased or rented, to another person. In such instances, the owner of the vehicle shall, within a reasonable time after notification of the parking violation, furnish to the courts the name and address of the person or company who leased or rented the vehicle. (1953, c. 879, ss. 1, 1½; 1983, c. 753; 1985, c. 764, s. 32; 1987, c. 736, s. 1.)

Local Modification. — City of Greenville: 1985 (Reg. Sess., 1986), c. 813; City of Jacksonville: 1985, c. 152; City of Wilson: 1985, c. 137; Town of Kernersville: 1987, c. 54; Town of Pittsboro: 1987, c. 460, s. 27; Town of Tarboro: 1985 (Reg. Sess., 1986), c. 905, s. 1.

Editor's Note. —

Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense."

Session Laws 1987, c. 736, s. 2 provides that parking violations before October 1, 1987, shall be governed by the law in effect at the time of the violation.

Effect of Amendments. —

The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, substituted "found responsible for an infraction" for "convicted" in the second paragraph of subsection (a).

The 1987 amendment, effective October 1, 1987, substituted "a penalty of not more than five dollars ($5.00)" for "a penalty of one dollar ($1.00)" at the end of the second paragraph of subsection (a).

§ 20-166. Duty to stop in event of accident or collision; furnishing information or assistance to injured person, etc.; persons assisting exempt from civil liability.

(b) In addition to complying with the requirement of (a), the driver as set forth in (a) shall give his name, address, driver's license number and the license plate number of his vehicle to the person struck or the driver or occupants of any vehicle collided with, provided that such person or persons are physically and mentally capable of receiving such information, and shall render to any

person injured in such accident or collision reasonable assistance, including the calling for medical assistance if it is apparent that such assistance is necessary or is requested by the injured person. A violation of this subsection is a misdemeanor punishable by a fine or by imprisonment for not more than two years, or both, in the discretion of the court.

(c) The driver of any vehicle, when he knows or reasonably should know that the vehicle which he is operating is involved in an accident or collision, which accident or collision, results:

(1) Only in damage to property; or

(2) In injury or death to any person, but only if the operator of the vehicle did not know and did not have reason to know of the death or injury;

shall immediately stop his vehicle at the scene of the accident or collision. A violation of this subsection is a misdemeanor punishable by a fine or by imprisonment for not more than two years, or both, in the discretion of the court.

(c1) In addition to complying with the requirement of (c), the driver as set forth in (c) shall give his name, address, driver's license number and the license plate number of his vehicle to the driver or occupants of any other vehicle involved in the accident or collision or to any person whose property is damaged in the accident or collision. If the damaged property is a parked and unattended vehicle and the name and location of the owner is not known to or readily ascertainable by the driver of the responsible vehicle, the said driver shall furnish the information required by this subsection to the nearest available peace officer, or, in the alternative, and provided he thereafter within 48 hours fully complies with G.S. 20-166.1(c), shall immediately place a paper-writing containing said information in a conspicuous place upon or in the damaged vehicle. If the damaged property is a guardrail, utility pole, or other fixed object owned by the Department of Transportation, a public utility, or other public service corporation to which report cannot readily be made at the scene, it shall be sufficient if the responsible driver shall furnish the information required to the nearest peace officer or make written report thereof containing said information by U.S. certified mail, return receipt requested, to the North Carolina Division of Motor Vehicles within five days following said collision. A violation of this subsection is a misdemeanor punishable by a fine or by imprisonment for not more than two years, or both, in the discretion of the court.

(1937, c. 407, s. 128; 1939, c. 10, ss. 1, 1½; 1943, c. 439; 1951, cc. 309, 794, 823; 1953, cc. 394, 793; c. 1340, s. 1; 1955, c. 913, s. 8; 1965, c. 176; 1967, c. 445; 1971, c. 958, s. 1; 1973, c. 507, s. 5; 1975, c. 716, s. 5; 1977, c. 464, s. 34; 1979, c. 667, s. 32; 1983, c. 912, s. 1; 1985, c. 324, ss. 1-4.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1985 amendment, effective October 1, 1985, rewrote the last sentence of subsection (b), which read "Violation of this subsection shall be punished as a misdemeanor," substituted "only if the operator of the vehicle did not know and did not have reason to know of the death or injury" for "which injury or death was not apparent to the operator of the other vehicle" at the end of subdivision (2) of subsection (c), rewrote the last sentence of subsection (c), which read "Violation of this subsection shall be punished as a misdemeanor," and rewrote the last sentence of subsection (c1), which read "Any person violating the provisions of

this subsection shall be guilty of a misdemeanor."

CASE NOTES

I. IN GENERAL.

Elements of Offense. —

The essential elements of the offense of hit and run with personal injury are: (1) That the defendant was involved in an accident; (2) that someone was physically injured in this accident; (3) that at the time of the accident the defendant was driving the vehicle; (4) that the defendant knew that he had struck a pedestrian and that the pedestrian suffered physical injury; (5) that the defendant did not stop his vehicle immediately at the scene of the accident; and (6) that the defendant's failure to stop was wilful, that is, intentional and without justification or excuse. State v. Acklin, 71 N.C. App. 261, 321 S.E.2d 532 (1984).

Burden of Proof on State. —

The State has the burden of presenting sufficient evidence on each and every element of the offense of hit and run with personal injury to warrant submitting its case to the jury. State v. Acklin, 71 N.C. App. 261, 321 S.E.2d 532 (1984).

Evidence of prior convictions for driving under the influence can properly be considered as an aggravating factor in sentencing a defendant for hit and run personal injury, impairment not being an element of the offense. State v. Ragland, 80 N.C. App. 496, 342 S.E.2d 532 (1986).

Applied in State v. Cobbins, 66 N.C. App. 616, 311 S.E.2d 653 (1984); State v. Carrington, 74 N.C. App. 40, 327 S.E.2d 594 (1985).

Cited in State v. Green, 77 N.C. App. 429, 335 S.E.2d 176 (1985).

§ 20-166.1. Reports and investigations required in event of collision.

(a) The driver of a vehicle involved in a collision resulting in injury to or death of any person or total property damage to an apparent extent of five hundred dollars ($500.00) or more shall immediately, by the quickest means of communication, give notice of the collision to the local police department if the collision occurs within a municipality, or to the office of the sheriff or other qualified rural police of the county wherein the collision occurred.

(b) The driver of any vehicle involved in a collision resulting in injury to or death of any person or total property damage to an apparent extent of five hundred dollars ($500.00) or more shall furnish proof of financial responsibility on forms prescribed by the Division.

(c) Notwithstanding any other provisions of this section, the driver of any motor vehicle which collides with another motor vehicle left parked or unattended on any street or highway of this State shall within 48 hours report the collision to the owner of such parked or unattended motor vehicle. Such report shall include the time, date and place of the collision, the driver's name, address, driver's license number and the registration number of the vehicle being operated by the driver at the time of the collision, and such report may be oral or in writing. Such written report must be transmitted to the current address of the owner of the parked or unattended vehicle by United States certified mail, return receipt requested, and a copy of such report shall be transmitted to the North Carolina Division of Motor Vehicles.

No report, oral or written, made pursuant to this Article shall be competent in any civil action except to establish identity of the

person operating the moving vehicle at the time of the collision referred to therein.

Any person who violates this subsection is guilty of a misdemeanor and shall be punishable by fine or imprisonment, or both, in the discretion of the court.

(d) The Division may require the driver of a vehicle involved in a collision which is required to be reported by this section to file a supplemental report when the original report is insufficient in the opinion of the Division.

(e) It shall be the duty of the State Highway Patrol or the sheriff's office or other qualified rural police to investigate all collisions required to be reported by this section when the collisions occur outside the corporate limits of a city or town; and it shall be the duty of the police department of each city or town to investigate all collisions required to be reported by this section when the collisions occur within the corporate limits of the city or town. Every law-enforcement officer who investigates a collision as required by this subsection, whether the investigation is made at the scene of the collision or by subsequent investigations and interviews, shall, within 24 hours after completing the investigation, forward a written report of the collision to the Division if the collision occurred outside the corporate limits of a city or town, or to the police department of the city or town if the collision occurred within the corporate limits of such city or town. Police departments should forward such reports to the Division within 10 days of the date of the collision. Provided, when a collision occurring outside the corporate limits of a city or town is investigated by a duly qualified law-enforcement officer other than a member of the State Highway Patrol, as permitted by this section, such other officer shall forward a written report of the collision to the office of the sheriff or rural police of the county wherein the collision occurred and the office of the sheriff or rural police shall forward such reports to the Division within 10 days of the date of the collision. The reports by law-enforcement officers shall be in addition to, and not in place of, the reports required of drivers by this section.

When any person involved in an automobile collision shall die as a result of said collision within a period of 12 months following said collision, and such death shall not have been reported in the original report, it shall be the duty of investigating enforcement officers to file a supplemental report setting forth the death of such person.

(f) Every person holding the office of medical examiner in this State shall report to the Division the death of any person as a result of a collision involving a motor vehicle and the circumstances of the collision within five days following such death. Every hospital shall notify the medical examiner of the county in which the collision occurred of the death within the hospital of any person who dies as a result of injuries apparently sustained in a collision involving a motor vehicle.

(g) Repealed by Session Laws 1987, c. 49, effective April 6, 1987.

(h) The Division shall prepare and shall upon request supply to police, [medical examiners], sheriffs, and other suitable agencies, or individuals, forms for collision reports calling for sufficiently detailed information to disclose with reference to a highway collision the cause, conditions then existing, and the persons and vehicles involved. All collision reports required by this section shall be made on forms supplied or approved by the Division.

(i) All collision reports, including supplemental reports, above mentioned, except those made by State, city or county police, shall be without prejudice and shall be for the use of the Division and shall not be used in any manner as evidence, or for any other purpose in any trial, civil or criminal, arising out of such collision except that the Division shall furnish upon demand of any court a properly executed certificate stating that a particular collision report has or has not been filed with the Division solely to prove a compliance with this section.

The reports made by State, city or county police and medical examiners, but no other reports required under this section, shall be subject to the inspection of members of the general public at all reasonable times, and the Division shall furnish a certified copy of any such report to any member of the general public who shall request the same, upon receipt of a fee of four dollars ($4.00) [for a] certified copy, or the Division is authorized to furnish without charge to departments of the governments of the United States, states, counties, and cities certified copies of such collision reports for official use.

Nothing herein provided shall prohibit the Division from furnishing to interested parties only the name or names of insurers and insured and policy number shown upon any reports required under this section.

(j) The Division shall receive collision reports required to be made by this section, and may tabulate and analyze such reports and publish annually, or at more frequent intervals, statistical information based thereon as to the number, cause and location of highway collisions.

Based upon its findings after analysis, the Division may conduct further necessary detailed research to determine more fully the cause and control of highway collisions. It may further conduct experimental field tests within areas of the State from time to time to prove the practicability of various ideas advanced in traffic control and collision prevention.

(k) A violation of any provision of this section is a misdemeanor punishable as provided in G.S. 20-176. (1953, c. 1340, s. 2; 1955, c. 913, s. 9; 1963, c. 1249; 1965, c. 577; 1971, c. 55; c. 763, s. 1; c. 958, ss. 2, 3; 1973, c. 1133, ss. 1, 2; c. 1330, s. 29; 1975, c. 307; c. 716, s. 5; 1979, c. 667, s. 33; 1981, c. 690, s. 14; 1983, c. 229, ss. 1, 2; 1985, c. 764, s. 33; 1987, c. 49.)

Editor's Note. — Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense."

Effect of Amendments. —

The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, added subsection (k).

The 1987 amendment, effective April 6, 1987, deleted subsection (g), relating to the report of a collision between a common carrier and another vehicle.

CASE NOTES

Applied in State v. Carrington, 74 N.C. App. 40, 327 S.E.2d 594 (1985).

§ 20-167. Vehicles transporting explosives.

Any person operating any vehicle transporting any explosive as a cargo or part of a cargo upon a highway shall at all times comply with the rules and regulations of the United States Department of Transportation as adopted by the Division of Motor Vehicles. (1937, c. 407, s. 129; 1985, c. 454, s. 7.)

Effect of Amendments. — The 1985 amendment, effective June 24, 1985, rewrote this section.

§ 20-167.1. Transportation of spent nuclear fuel.

(a) No person, firm or corporation shall transport upon the highways of this State any spent nuclear fuel unless such person, firm, or corporation notifies the State Highway Patrol in advance of transporting the spent nuclear fuel.

(b) The provisions of this section shall apply whether or not the fuel is for delivery in North Carolina and whether or not the shipment originated in North Carolina.

(c) The Radiation Protection Commission is authorized to adopt, promulgate, amend, and repeal rules and regulations necessary to implement the provisions of this section.

(d) Any person, firm or corporation violating any provision of this section is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars ($500.00), and each unauthorized shipment shall constitute a separate offense. (1977, c. 839, s. 1; 1985, c. 764, s. 33.1.)

Editor's Note. — Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense."

Effect of Amendments. — The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, inserted "is guilty of a misdemeanor and" in subsection (d).

§ 20-168. Drivers of State, county, and city vehicles subject to the provisions of this Article.

CASE NOTES

Applied in Pinkston v. Connor, 63 N.C. App. 628, 306 S.E.2d 132 (1983).

§ 20-171. Traffic laws apply to persons riding animals or driving animal-drawn vehicles.

CASE NOTES

The legislature intended the provisions of the traffic laws of North Carolina applicable to the drivers of "vehicles" to apply to horseback riders irrespective of whether a horse is a vehicle. State v. Dellinger, 73 N.C. App. 685, 327 S.E.2d 609 (1985).

Part 11. Pedestrians' Rights and Duties.

§ 20-172. Pedestrians subject to traffic-control signals.

(a) The Board of Transportation, with reference to State highways, and local authorities, with reference to highways under their jurisdiction, are hereby authorized to erect or install, at intersections or other appropriate places, special pedestrian control signals exhibiting the words or symbols "WALK" or "DON'T WALK" as a part of a system of traffic-control signals or devices.

(1937, c. 407, s. 133; 1973, c. 507, s. 5; c. 1330, s. 31; 1987, c. 125.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective May 4, 1987, inserted "or symbols" near the end of subsection (a).

§ 20-174. Crossing at other than crosswalks; walking along highway.

CASE NOTES

II. MOTORIST'S DUTY UNDER SUBSECTION (E).

Duty of Motorist to Child. —

A motorist who sees, or by the exercise of reasonable care should see, children on or near the highway must recognize that children have less discretion than adults and may run out into the street in front of his approaching automobile unmindful of the danger. Therefore, proper care requires a motorist to maintain a vigilant lookout, to give a timely warning of his approach, and to drive at such speed and in such a manner that he can control his vehicle if a child, in obedience to a childish impulse, attempts to cross the street in front of his approaching automobile. Gupton v. McCombs, 74 N.C. App. 547, 328 S.E.2d 886, cert. denied, 314 N.C. 329, 333 S.E.2d 486 (1985).

Motorist Held Not Entitled to Sudden Emergency Instruction. — Motorist who observed a child standing at the side of the road but never sounded her horn to warn the child of her approach, failed to keep a vigilant lookout for the child and testified that she assumed that the child would wait for oncoming cars and her vehicle to pass before crossing the street was not entitled to sudden emergency instruction. Gupton v. McCombs, 74 N.C. App. 547, 328 S.E.2d 886, cert. denied, 314 N.C. 329, 333 S.E.2d 486 (1985).

III. NEGLIGENCE AND CONTRIBUTORY NEGLIGENCE.

And violations of this section, etc.—

Evidence of a violation of this section does not constitute negligence or contributory negligence per se, but rather is some proof of negligence, to be consid-

ered with the rest of the evidence in the case. Troy v. Todd, 68 N.C. App. 63, 313 S.E.2d 896 (1984).

Failure to yield the right-of-way, etc. — Although a violation of subsection (a) is not contributory negligence per se, a failure to yield the right-of-way to a motor vehicle may constitute contributory negligence as a matter of law. Meadows v. Lawrence, 75 N.C. App. 86, 330 S.E.2d 47 (1985), aff'd, 315 N.C. 383, 337 S.E.2d 851 (1986).

Pedestrian Crossing at Night Outside Crosswalk. — If the road is straight, visibility unobstructed, the weather clear, and the headlights of the vehicle in use, the failure of a pedestrian crossing a road at night outside a crosswalk to see and avoid a vehicle will consistently be deemed contributory negligence as a matter of law. Meadows v. Lawrence, 75 N.C. App. 86, 330 S.E.2d 47 (1985), aff'd, 315 N.C. 383, 337 S.E.2d 851 (1986).

§ 20-174.1. Standing, sitting or lying upon highways or streets prohibited.

CASE NOTES

Applied in Sizemore v. Raxter, 73 N.C. App. 531, 327 S.E.2d 258 (1985).

§ 20-175. Pedestrians soliciting rides, employment, business or funds upon highways or streets.

CASE NOTES

Applied in Pinkston v. Connor, 63 N.C. App. 628, 306 S.E.2d 132 (1983).

Part 12. Sentencing; Penalties.

§ 20-176. Penalty for misdemeanor or infraction.

(a) Violation of a provision of Part 9, 10, 10A, or 11 of this Article is an infraction unless the violation is specifically declared by law to be a misdemeanor or felony. Violation of the remaining Parts of this Article is a misdemeanor unless the violation is specifically declared by law to be an infraction or a felony.

(b) Unless a specific penalty is otherwise provided by law, a person found responsible for an infraction contained in this Article may be ordered to pay a penalty of not more than one hundred dollars ($100.00).

(c) Unless a specific penalty is otherwise provided by law, a person convicted of a misdemeanor contained in this Article may be imprisoned for not more than 60 days or fined not more than one hundred dollars ($100.00), or both such fine and imprisonment. A punishment is specific for purposes of this subsection if it contains a quantitative limit on the term of imprisonment or the amount of fine a judge can impose.

(c1) Notwithstanding any other provision of law, no person convicted of a misdemeanor for the violation of any provision of this Chapter except G.S. 20-28(a) and (b), G.S. 20-141(j), G.S.

20-141.3(b) and (c), G.S. 20-141.4, or a second or subsequent conviction of G.S. 20-138.1 shall be imprisoned in the State prison system unless the person previously has been imprisoned in a local confinement facility, as defined by G.S. 153A-217(5), for a violation of this Chapter.

(d) For purposes of determining whether a violation of an offense contained in this Chapter constitutes negligence per se, crimes and infractions shall be treated identically. (1937, c. 407, s. 137; 1951, c. 1013, s. 7; 1957, c. 1255; 1967, c. 674, s. 3; 1969, c. 378, s. 3; 1973, c. 1330, s. 34; 1975, c. 644; 1985, c. 764, s. 20; 1985 (Reg. Sess., 1986), c. 852, s. 7; c. 1014, s. 202.)

Editor's Note. — Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense."

Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243, contains a severability clause.

Effect of Amendments. — The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, rewrote this section.

Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 7, effective September 1, 1986, substituted "crimes" for "criminal offenses" in subsection (d).

Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 202, effective October 1, 1986 and applicable to persons sentenced on and after that date, added subsection (c1).

CASE NOTES

Applied in Kraemer v. Moore, 67 N.C. App. 505, 313 S.E.2d 610 (1984); Field v. Sheriff of Wake County, 654 F. Supp. 1367 (E.D.N.C. 1986).

§ 20-179. Sentencing hearing after conviction for impaired driving; determination of grossly aggravating and aggravating and mitigating factors; punishments.

(c) Determining Existence of Grossly Aggravating Factors. — At the sentencing hearing, based upon the evidence presented at trial and in the hearing, the judge must first determine whether there are any grossly aggravating factors in the case. If the defendant has been convicted of two or more prior offenses involving impaired driving, if the convictions occurred within seven years before the date of the offense for which he is being sentenced, the judge must impose the Level One punishment under subsection (g). The judge must also impose the Level One punishment if he determines that two or more of the following grossly aggravating factors apply:

(1) A single conviction for an offense involving impaired driving, if the conviction occurred within seven years before the date of the offense for which the defendant is being sentenced.

(2) Driving by the defendant at the time of the offense while his driver's license was revoked under G.S. 20-28, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) Serious injury to another person caused by the defendant's impaired driving at the time of the offense.

If the judge determines that only one of the above grossly aggravating factors applies, he must impose the Level Two punishment under subsection (h). In imposing a Level One or Two punishment, the judge may consider the aggravating and mitigating factors in subsections (d) and (e) in determining the appropriate sentence. If there are no grossly aggravating factors in the case, the judge must weigh all aggravating and mitigating factors and impose punishment as required by subsection (f).

(d) Aggravating Factors to Be Weighed. — The judge must determine before sentencing under subsection (f) whether any of the aggravating factors listed below apply to the defendant. The judge must weigh the seriousness of each aggravating factor in the light of the particular circumstances of the case. The factors are:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.20 or more within a relevant time after the driving.
(2) Especially reckless or dangerous driving.
(3) Negligent driving that led to an accident causing property damage in excess of five hundred dollars ($500.00) or personal injury.
(4) Driving by the defendant while his driver's license was revoked.
(5) Two or more prior convictions of a motor vehicle offense not involving impaired driving for which at least three points are assigned under G.S. 20-16 or for which the convicted person's license is subject to revocation, if the convictions occurred within five years of the date of the offense for which the defendant is being sentenced, or one or more prior convictions of an offense involving impaired driving that occurred more than seven years before the date of the offense for which the defendant is being sentenced.
(6) Conviction under G.S. 20-141(j) of speeding by the defendant while fleeing or attempting to elude apprehension.
(7) Conviction under G.S. 20-141 of speeding by the defendant by at least 30 miles per hour over the legal limit.
(8) Passing a stopped school bus in violation of G.S. 20-217.
(9) Any other factor that aggravates the seriousness of the offense.

Except for the factor in subdivision (5) the conduct constituting the aggravating factor must occur during the same transaction or occurrence as the impaired driving offense.

(e) Mitigating Factors to Be Weighed. — The judge must also determine before sentencing under subsection (f) whether any of the mitigating factors listed below apply to the defendant. The judge must weigh the degree of mitigation of each factor in light of the particular circumstances of the case. The factors are:

(1) Slight impairment of the defendant's faculties resulting solely from alcohol, and an alcohol concentration that did not exceed 0.11 at any relevant time after the driving.
(2) Slight impairment of the defendant's faculties, resulting solely from alcohol, with no chemical analysis having been available to the defendant.
(3) Driving at the time of the offense that was safe and lawful except for the impairment of the defendant's faculties.

(4) A safe driving record, with the defendant's having no conviction for any motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation within five years of the date of the offense for which the defendant is being sentenced.

(5) Impairment of the defendant's faculties caused primarily by a lawfully prescribed drug for an existing medical condition, and the amount of the drug taken was within the prescribed dosage.

(6) The defendant's voluntary submission to a mental health facility for assessment after he was charged with the impaired driving offense for which he is being sentenced, and, if recommended by the facility, his voluntary participation in the recommended treatment.

(7) Any other factor that mitigates the seriousness of the offense.

Except for the factors in subdivisions (4), (6) and (7), the conduct constituting the mitigating factor must occur during the same transaction or occurrence as the impaired driving offense.

(f1) Aider and Abettor Punishment. — Nothwithstanding any other provisions of this section, a person convicted of impaired driving under G.S. 20-138.1 under the common law concept of aiding and abetting is subject to Level Five punishment. The judge need not make any findings of grossly aggravating, aggravating, or mitigating factors in such cases.

(f2) Limit on Consolidation of Judgments. — Except as provided in subsection (f1), in each charge of impaired driving for which there is a conviction the judge must determine if the sentencing factors described in subsections (c), (d) and (e) are applicable unless the impaired driving charge is consolidated with a charge carrying a greater punishment. Two or more impaired driving charges may not be consolidated for judgment.

(g) Level One Punishment. — A defendant subject to Level One punishment may be fined up to two thousand dollars ($2,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 14 days and a maximum term of not more than 24 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least 14 days. If the defendant is placed on probation, the judge must, if required by subsections (*l*) or (m), impose the conditions relating to treatment and education described in those subsections. The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so.

(h) Level Two Punishment. — A defendant subject to Level Two punishment may be fined up to one thousand dollars ($1,000) and must be sentenced to a term of imprisonment that includes a minimum term of not less than seven days and a maximum term of not more than 12 months. The term of imprisonment may be suspended only if a condition of special probation is imposed to require the defendant to serve a term of imprisonment of at least seven days. If the defendant is placed on probation, the judge must, if required by subsections (*l*) or (m), impose the conditions relating to treatment

and education described in those subsections. The judge may impose any other lawful condition of probation. If the judge does not place on probation a defendant who is otherwise subject to the mandatory assessment and treatment provisions of subsection (m), he must include in the record of the case his reasons for not doing so.

(i) Level Three Punishment. — A defendant subject to Level Three punishment may be fined up to five hundred dollars ($500.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 72 hours and a maximum term of not more than six months. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of at least 72 hours as a condition of special probation; or

(2) Perform community service for a term of at least 72 hours; or

(3) Not operate a motor vehicle for a term of at least 90 days; or

(4) Any combination of these conditions.

The judge in his discretion may impose any other lawful condition of probation and, if required by subsections (*l*) or (m), must impose the conditions relating to treatment and education described in those subsections. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(j) Level Four Punishment. — A defendant subject to Level Four punishment may be fined up to two hundred fifty dollars ($250.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 48 hours and a maximum term of not more than 120 days. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of 48 hours as a condition of special probation; or

(2) Perform community service for a term of 48 hours; or

(3) Not operate a motor vehicle for a term of 60 days; or

(4) Any combination of these conditions.

The judge in his discretion may impose any other lawful condition of probation and, if required by subsections (*l*) or (m), must impose the conditions relating to treatment and education described in those subsections. This subsection does not affect the right of a defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k) Level Five Punishment. — A defendant subject to Level Five punishment may be fined up to one hundred dollars ($100.00) and must be sentenced to a term of imprisonment that includes a minimum term of not less than 24 hours and a maximum term of not more than 60 days. The term of imprisonment must be suspended, on the condition that the defendant:

(1) Be imprisoned for a term of 24 hours as a condition of special probation; or

(2) Perform community service for a term of 24 hours; or

(3) Not operate a motor vehicle for a term of 30 days; or

(4) Any combination of these conditions.

The judge may in his discretion impose any other lawful condition of probation and, if required by subsections (*l*) or (m), must impose the conditions relating to treatment and education described in those subsections. This subsection does not affect the right of a

defendant to elect to serve the suspended sentence of imprisonment as provided in G.S. 15A-1341(c).

(k1) Credit for Inpatient Treatment. — Pursuant to G.S. 15A-1351(a), the judge may order that a term of imprisonment imposed as a condition of special probation under any level of punishment be served as an inpatient in a facility operated or licensed by the State for the treatment of alcoholism or substance abuse where the defendant has been accepted for admission or commitment as an inpatient. The defendant shall bear the expense of any treatment. The judge may impose restrictions on the defendant's ability to leave the premises of the treatment facility and require that the defendant follow the rules of the treatment facility. The judge may credit against the active sentence imposed on a defendant the time the defendant was an inpatient at the treatment facility, provided such treatment occurred after the commission of the offense for which the defendant is being sentenced. The credit may not be used more than once during the seven-year period immediately preceding the date of the offense. This section shall not be construed to limit the authority of the judge in sentencing under any other provisions of law.

(*l*) Education Required in Certain Cases. — If a defendant being sentenced under this section is placed on probation, he must be required as a condition of that probation to complete the course of instruction successfully at an alcohol and drug education traffic school established pursuant to G.S. 20-179.2 within 90 days of the date of conviction unless:

(1) He has previously been assigned to an alcohol and drug education traffic school and has successfully completed the course of instruction; or

(2) The judge finds that the defendant will not benefit from the course of instruction because of specific, extenuating circumstances; or

(3) There is no alcohol and drug education traffic school within a reasonable distance of the defendant's residence.

(m) Assessment and Treatment Required in Certain Cases. — If a defendant being sentenced under this section is placed on probation, he shall be required as a condition of that probation to obtain a substance abuse assessment if:

(1) He had an alcohol concentration of 0.15 or more as indicated by a chemical analysis taken when he was charged; or

(2) He has a prior conviction for an offense involving impaired driving within the five years preceding the date of the offense for which he is being sentenced and, when he was charged with the current offense, he had an alcohol concentration of 0.10 or more; or

(3) He willfully refused to submit to a chemical analysis.

The judge shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The

Secretary of the Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a "Certified Alcoholism, Drug Abuse or Substance Abuse Counselor", as defined by the Department of Human Resources. If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years. The judge shall require the defendant to pay fifty dollars ($50.00) for the services of the assessment facility and any additional treatment fees that may be charged by the treatment facility. If the defendant is treated by an area mental health facility, G.S. 122C-146 applies. Any determinations with regard to the defendant's ability to pay the assessment fee shall be made by the judge. In those cases in which no substance abuse handicap is identified, that finding shall be filed with the court. When treatment is required, the treatment agency's progress reports shall be filed with the court or the Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. Upon the completion of the court-ordered assessment or court-ordered treatment, the assessing or treatment agency shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the driver's license of a defendant ordered to obtain assessment or participate in a treatment program unless it has received the original certificate of completion from the assessing or treatment agency, provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3.

The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program.

(n) Time Limits for Performance of Community Service. — If the judgment requires the defendant to perform a specified number of hours of community service as provided in subsections (i), (j), or (k), the community service must be completed:

(1) Within 90 days, if the amount of community service required is 72 hours or more; or

(2) Within 60 days, if the amount of community service required is 48 hours; or

(3) Within 30 days, if the amount of community service required is 24 hours.

The court may extend these time limits upon motion of the defendant if it finds that the defendant has made a good faith effort to comply with the time limits specified in this subsection.

(o) Evidentiary Standards; Proof of Prior Convictions. — In the sentencing hearing, the State must prove any grossly aggravating or aggravating factor by the greater weight of the evidence, and the defendant must prove any mitigating factor by the greater weight of the evidence. Evidence adduced by either party at trial may be utilized in the sentencing hearing. Except as modified by this section, the procedure in G.S. 15A-1334(b) governs. The judge may accept any evidence as to the presence or absence of previous convictions that he finds reliable but he must give prima facie effect to convictions recorded by the Division or any other agency of the State of North Carolina. A copy of such conviction records transmitted by the police information network in general accordance with the procedure authorized by G.S. 20-26(b) is admissible in evidence without further authentication. If the judge decides to impose an active sentence of imprisonment that would not have been imposed but for a prior conviction of an offense, the judge must afford the defendant an opportunity to introduce evidence that the prior conviction had been obtained in a case in which he was indigent, had no counsel, and had not waived his right to counsel. If the defendant proves by the preponderance of the evidence all three above facts concerning the prior case, the conviction may not be used as a grossly aggravating or aggravating factor.

(p) Limit on Amelioration of Punishment. — For active terms of imprisonment imposed under this section:

(1) The judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(2) The defendant must serve the mandatory minimum period of imprisonment and good or gain time credit may not be used to reduce that mandatory minimum period.

(3) The defendant may not be released on parole unless he is otherwise eligible and has served the mandatory minimum period of imprisonment.

With respect to the minimum or specific term of imprisonment imposed as a condition of special probation under this section, the judge may not give credit to the defendant for the first 24 hours of time spent in incarceration pending trial.

(r) Supervised Probation Terminated. — Unless a judge in his discretion determines that supervised probation is necessary, and includes in the record that he has received evidence and finds as a fact that supervised probation is necessary, and states in his judgment that supervised probation is necessary, a defendant convicted of an offense of impaired driving shall be placed on unsupervised probation if he meets two conditions. These conditions are that he

has not been convicted of an offense of impaired driving within the seven years preceding the date of this offense for which he is sentenced and that the defendant is sentenced under subsections (i), (j), and (k) of this section.

When a judge determines in accordance with the above procedures that a defendant should be placed on supervised probation, the judge shall authorize the probation officer to modify the defendant's probation by placing the defendant on unsupervised probation upon the completion by the defendant of the following conditions of his suspended sentence:

(1) Community service; or

(2) Treatment and education as described in subsections (*l*) and (m); or

(3) Payment of any fines, court costs, and fees; or

(4) Any combination of these conditions.

(s) Method of Serving Sentence. — The judge in his discretion may order a term of imprisonment or community service to be served on weekends, even if the sentence cannot be served in consecutive sequence. (1937, c. 407, s. 140; 1947, c. 1067, s. 18; 1967, c. 510; 1969, c. 50; c. 1283, ss. 1-5; 1971, c. 619, s. 16; c. 1133, s. 1; 1975, c. 716, s. 5; 1977, c. 125; 1977, 2nd Sess., c. 1222, s. 1; 1979, c. 453, ss. 1, 2; c. 903, ss. 1, 2; 1981, c. 466, ss. 4-6; 1983, c. 435, s. 29; 1983 (Reg. Sess., 1984), c. 1101, ss. 21-29, 36; 1985, c. 706, s. 1; 1985 (Reg. Sess., 1986), c. 1014, s. 201(d); 1987, c. 139; c. 352, s. 1; c. 797, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1101, s. 38, makes ss. 3, 8, 13, 16, 22, 23, 34, 35 and 36 of the act effective October 1, 1984, and the remaining sections, except as provided in s. 37, effective upon ratification. Section 37 sets out special provisions with regard to s. 32, which amends § 20-179.3. The act was ratified July 6, 1984.

Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 243, contains a severability clause.

Session Laws 1987, c. 797, s. 4 provides that s. 1 of the act, which amended subsection (m) of this section as set out above, shall become effective January 1, 1988, and shall expire June 30, 1989, and that it shall apply to sentencing for convictions after January 1, 1988.

Section 2 of Session Laws 1987, c. 797 again rewrites subsection (m) of this section, and s. 5 of c. 797 provides that the version of subsection (m) set out in s. 2 shall be established as a pilot program effective Jan. 1, 1988, to become effective statewide July 1, 1989.

Sections 2 and 5 of Session Laws 1987, c. 797, read in full:

"Sec. 2. G.S. 20-179(m) reads as rewritten:

"(m) Assessment and Treatment Required. If a defendant being sentenced under this section is placed on probation, he shall be required as a condition of that probation to obtain a substance abuse assessment; provided, however, that the defendant shall have the option of meeting the conditions of his probation either in the county of his conviction or in the county of his residence and he shall be sentenced according to the law of the county selected. The defendant shall inform the court at the time of his conviction of the county in which he has chosen to meet the conditions of his probation. The judge shall require the defendant to obtain the assessment from an area mental health agency, its designated agent, or a private facility licensed by the State for the treatment of alcoholism and substance abuse. Unless a different time limit is specified in the court's judgment, the defendant shall schedule the assessment within 30 days from the date of the judgment. Any agency performing assessments shall give written notification of its intention to do so to the area mental health authority in the catchment area in which it is located and to the Department of Human Resources. The Secretary of the

Department of Human Resources may adopt rules to implement the provisions of this subsection, and these rules may include provisions to allow defendant to obtain assessments and treatment from agencies not located in North Carolina. The assessing agency shall give the client a standardized test capable of providing uniform research data, including, but not limited to, demographic information, defendant history, assessment results and recommended interventions, approved by the Department of Human Resources to determine chemical dependency. A clinical interview concerning the general status of the defendant with respect to chemical dependency shall be conducted by the assessing agency before making any recommendation for further treatment. A recommendation made by the assessing agency shall be signed by a Certified Alcoholism, Drug Abuse or Substance Abuse Counselor, as defined by the Department of Human Resources.

"If the assessing agency recommends that the defendant participate in a treatment program, the judge may require the defendant to do so, and he shall require the defendant to execute a Release of Information authorizing the treatment agency to report his progress to the court or the Department of Correction. The judge may order the defendant to participate in an appropriate treatment program at the time he is ordered to obtain an assessment, or he may order him to reappear in court when the assessment is completed to determine if a condition of probation requiring participation in treatment should be imposed. An order of the court shall not require the defendant to participate in any treatment program for more than 90 days unless a longer treatment program is recommended by the assessing agency and his alcohol concentration was .15 or greater as indicated by a chemical analysis taken when he was charged or this was a second or subsequent offense within five years.

"At the time of sentencing the judge shall require the defendant to pay one hundred twenty-five dollars ($125.00). The payment of the fee of one hundred twenty-five dollars ($125.00) shall be (i) fifty dollars ($50.00) to the assessing agency and (ii) seventy-five dollars ($75.00) to either a treatment facility or to an alcohol and drug education traffic school depending upon the recommendation made by the assessing agency. G.S. 20-179(*l*) shall not apply to defendants sentenced under this section. Fees received by the Area Mental Health, Mental Retardation, and Substance Abuse Authorities under this section shall be administered pursuant to G.S. 20-179.2(e), provided, however that the provisions of G.S. 20-179.2(c) shall not apply to monies received under this section. The operators of the local alcohol and drug education traffic school may change the length of time required to complete the school in accordance with administrative costs, provided, however that the length and the curriculum of the school shall be approved by the Commission for Mental Health, Mental Retardation and Substance Abuse Services and in no event shall the school be less than five hours in length. If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee. Any determinations with regard to the defendant's ability to pay the fee shall be made by the judge.

"In those cases in which no substance abuse handicap is identified, that finding shall be filed with the court and the defendant shall be required to attend an alcohol and drug education traffic school. When treatment is required, the treatment agency's progress reports shall be filed with the court or the Department of Correction at intervals of no greater than six months until the termination of probation or the treatment agency determines and reports that no further treatment is appropriate. If the defendant is required to participate in a treatment program and he completes the recommended treatment, he does not have to attend the alcohol and drug education traffic school. Upon the completion of the court-ordered assessment and court-ordered treatment or school, the assessing or treatment agency or school shall give the Division of Motor Vehicles the original of the certificate of completion, shall provide the defendant with a copy of that certificate, and shall retain a copy of the certificate on file for a period of five years. The Division of Motor Vehicles shall not reissue the driver's license of a defendant ordered to obtain assessment, participate in a treatment program or school unless it has received the original certificate of completion from the assessing or treatment agency or school, provided, however that a defendant may be issued a limited driving privilege pursuant to G.S. 20-179.3. Un-

less the judge has waived the fee, no certificate shall be issued unless the agency or school has received the fifty dollar ($50.00) fee and the seventy-five dollar ($75.00) fee as appropriate.

"The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program."

"Sec. 5. Section 2 of this act shall be established as a pilot program in not more than ten counties in the State as determined and required by the Division Director of Mental Health, Mental Retardation and Substance Abuse Services, shall become effective January 1, 1988, and shall apply to sentencing for convictions after that date. The Division for Mental Health, Mental Retardation and Substance Abuse Services shall monitor the pilot programs and shall report administrative costs, case management practices, particpant recidivism, and other relevant information, to the General Assembly on or before February 1, 1989. Section 2 of this act shall become effective throughout the State July 1, 1989."

The counties participating in the pilot program are as follows: Buncombe, Iredell, Rowan, Cabarrus, Forsyth, Alamance, Wake, Wayne, Pender, and New Hanover.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment by c. 1101, ss. 21 and 24 to 29, effective July 6, 1984, substituted "before the date of the offense" for "of the date of the offense" in the second sentence of the introductory paragraph of subsection (c) and in subdivision (c)(1), inserted "at the time of the offense" in subdivision (c)(2), inserted "at the time of the offense" at the end of subdivision (c)(3), inserted subsections (f1) and (f2), inserted "that includes a minimum term" and "a maximum term of" in subsections (g), (h), (i), (j), (k), substituted "if required by" for "if required" in the third sentence of subsection (k), inserted "or" at the end of subdivision (*l*)(2), added subdivision (*l*)(3), substituted "the conviction may not be used as a grossly aggravating or aggravating factor" for "that conviction may not be used as a basis for imposing an active sentence of imprisonment" at the end of subsection (o), and rewrote subsection (p).

The 1983 (Reg. Sess., 1984) amendment by c. 1101, ss. 22, 23 and 36, effective October 1, 1984, deleted "if the offense occurred during the same act or transaction as the impaired driving offense" at the end of subdivisions (d)(6) and (d)(7), added the last sentence of subsection (d), substituted "motor vehicle offense for which at least four points are assigned under G.S. 20-16 or for which the person's license is subject to revocation" for "serious traffic violation" in subdivision (e)(4), substituted "the impaired driving offense for which he is being sentenced" for "impaired driving" in subdivision (e)(6), added the last sentence of subsection (e), and deleted the last sentence of subsection (n), which read "Failure to complete the community service requirements within the applicable time limits is a violation of the defendant's probation and, in addition, is a ground for revocation of any limited driving privilege held by the defendant for the impaired driving offense."

The 1985 amendment, effective 30 days after ratification and applicable to offenses committed on and after that date, added subsections (r) and (s). The act was ratified July 11, 1985.

The 1985 (Reg. Sess., 1986) amendment, effective July 15, 1986, deleted the second sentence of subsection (s), which read "The judge in his discretion may order that a sentence of imprisonment of seven or more consecutive days may be served with work release privileges."

Session Laws 1987, c. 139, effective May 5, 1987, and applicable to pending cases, added subsection (k1).

Session Laws 1987, c. 352, s. 2, effective June 12, 1987, added the last paragraph of subsection (m).

Session Laws 1987, c. 797, s. 1, effective January 1, 1988, and applicable to sentencing for convictions after January 1, 1988, rewrote subsection (m). As to the expiration of this amendment, see the Editor's note above.

CASE NOTES

Bifurcated Procedure Constitutional. — The bifurcated procedure that the legislature has established for impaired driving cases, with the jury determining whether § 20-138.1 has been violated and the judge determining the length of punishment required under this section, is constitutional. State v. Field, 75 N.C. App. 627, 331 S.E.2d 221, cert. denied and appeal dismissed, 315 N.C. 186, 337 S.E.2d 582 (1985).

Because the factors before the trial judge in determining sentencing are not elements of the offense, their consideration for purposes of sentencing is a function of the judge and is therefore not susceptible to constitutional challenge based upon either the Sixth Amendment right to a jury trial or Article I, Section 24 of the North Carolina Constitution. State v. Denning, 316 N.C. 523, 342 S.E.2d 855 (1986), involving sentencing under this section for impaired driving.

Serious Injury to Another Not Element of Offense. — Whether the defendant seriously injured another person was not an element of the crime of driving while impaired; it was a sentencing factor that the General Assembly deemed to be important in punishing those convicted of driving while impaired. State v. Field, 75 N.C. App. 627, 331 S.E.2d 221, cert. denied and appeal dismissed, 315 N.C. 186, 337 S.E.2d 582 (1985).

Jury Determines "Serious Injury to Another". — Defendant is entitled to have the grossly aggravating factor of "serious injury to another" person caused by his impaired driving considered by a jury and found beyond a reasonable doubt before the State may impose the sentence which he has already received. Field v. Sheriff of Wake County, 654 F. Supp. 1367 (E.D.N.C. 1986).

Meaning of "Gross Impairment". — "Gross impairment" is a high level of impairment, higher than that impairment which must be shown to prove the offense of DUI. State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985).

Effect of BAC on Determination of "Gross Impairment". — While the statutory blood alcohol concentration (BAC) of 0.20 may provide a "bright line" for determining "gross impairment," the finding of a BAC of 0.20 clearly is not required for the court to make the finding of gross impairment. State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985).

Evidence was sufficient to allow the court to consider whether defendant was grossly impaired, where police officer testified that defendant drove erratically and did not keep his car in its lane of travel, was obviously unsteady on his feet, slurred his speech, had difficulty answering routine questions, and could not perform any of the four field sobriety tests satisfactorily; that defendant's blood alcohol concentration (BAC) was .14; and that he admitted to the officer that he was under the influence of alcohol. State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985).

Especially Reckless or Dangerous Driving. — The legislature wrote the aggravating factor "especially reckless or dangerous driving" in the disjunctive, intending that evidence of either especially reckless or especially dangerous driving was enough to support one aggravating factor. However, there would need to be at least one item of evidence not used to prove either an element of the offense or any other factor in aggravation to support each additional aggravating factor. State v. Mack, 81 N.C. App. 578, 345 S.E.2d 223 (1986).

Impaired driving is in and of itself "reckless" and "dangerous." Therefore, to determine whether there was enough evidence to prove that defendant's driving was both "especially reckless" and "especially dangerous," the facts of a case must disclose excessive aspects of recklessness and dangerousness not normally present in the offense of impaired driving. State v. Mack, 81 N.C. App. 578, 345 S.E.2d 223 (1986).

Falling Asleep While Driving is Especially Dangerous. — While evidence that defendant fell asleep and ran off the road was not enough evidence to support both the especially dangerous and the especially reckless aggravating factors, falling asleep while driving is at least especially dangerous. State v. Mack, 81 N.C. App. 578, 345 S.E.2d 223 (1986).

"Especially Reckless" Driving Not Shown. — Where although the assistant district attorney stated that defendant had been charged with passing through a red light without stopping, there was no evidence before the court to support this assertion, the court erred in finding as an aggravating factor that defendant's driving had been especially

reckless. State v. Lockwood, 78 N.C. App. 205, 336 S.E.2d 678 (1985).

The burden to prove a factor under this section is by the greater weight of the evidence, similar to the preponderance standard used in the Fair Sentencing Act, § 15A-1340.4. State v. Harrington, 78 N.C. App. 39, 336 S.E.2d 852 (1985).

Provision of this section specifically requiring the State "to prove any grossly aggravating or aggravating factor by the greater weight of the evidence" is synonymous with the "preponderance of the evidence" standard which has passed constitutional muster with the courts. State v. Denning, 316 N.C. 523, 342 S.E.2d 855 (1986).

Sentence of 30 Days as Condition of Suspension in Imposing Level Four Punishment Was Error. — If the court had correctly found that a level four punishment should have been imposed, it erred in requiring the defendant to serve 30 days as part of the conditions of a suspended sentence, as subsection (j)(1) limits the term of imprisonment to 48 hours. State v. MaGee, 75 N.C. App. 357, 330 S.E.2d 825 (1985).

Prior convictions are not an element of the offense of driving while impaired, but are now merely one of several factors relating to punishment. State v. Denning, 316 N.C. 523, 342 S.E.2d 855 (1986).

When Prior Conviction May Not Be Used. — Under this section, once the State has proven by the greater weight of the evidence a prior driving under the influence conviction, defendant has the burden of proving by the preponderance of the evidence that in the case of the prior conviction (1) he was indigent; (2) he had no counsel; and (3) he had not waived counsel. If defendant meets his burden on all three facts, then the prior conviction may not be used as a basis for imposing an active sentence. State v. Haislip, 79 N.C. App. 656, 339 S.E.2d 832 (1986).

Formal Rules of Evidence Not Applicable to Sentencing Hearing Under Subsection (o). — Evidence adduced by either party at trial may be used at the sentencing hearing, under subsection (o) of this section, and the formal rules of evidence do not apply. State v. Haislip, 79 N.C. App. 656, 339 S.E.2d 832 (1986).

But Statement by Counsel Is Not Evidence. — While the formal rules of evidence do not apply at a sentencing hearing under subsection (o) of this section, the statement by defendant's counsel that defendant was indigent at the time of his 1981 driving under the influence conviction was not evidence. State v. Haislip, 79 N.C. App. 656, 339 S.E.2d 832 (1986).

Sentencing Forms Need Not Be Signed at Time of Sentencing. — There is no requirement in the sentencing provisions of the Safe Roads Act requiring sentencing forms to be signed at the time of sentencing. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

Applied in State v. Cooney, 72 N.C. App. 649, 325 S.E.2d 15 (1985).

Quoted in State v. Midgett, 78 N.C. App. 387, 337 S.E.2d 117 (1985).

Cited in State v. Gooden, 65 N.C. App. 669, 309 S.E.2d 707 (1983); United States v. Kendrick, 636 F. Supp. 189 (E.D.N.C. 1986).

§ 20-179.2. Alcohol and drug education traffic school programs; guidelines and implementation by Commission for Mental Health, Mental Retardation and Substance Abuse Services; approval of Department of Human Resources; fees.

(c) A fee of one hundred dollars ($100.00) shall be paid by all persons enrolling in an alcohol and drug education traffic school program established pursuant to this section. That fee must be paid to an official designated for that purpose and at a time and place specified by the Area Mental Health, Mental Retardation and Substance Abuse Authority providing the course of instruction in which the person is enrolled, except that if the clerk of court in the county in which the person is convicted agrees to collect the fees,

the clerk shall collect all fees for persons convicted in that county. The clerk shall pay the fees collected to the Area Mental Health, Mental Retardation and Substance Abuse Authority for the catchment area where the clerk is located regardless of the location where the defendant attends the alcohol and drug education traffic school and that authority shall distribute the funds in accordance with the rules and regulations of the Department. The fee must be paid in full within two weeks from the date school attendance is ordered as a condition of probation, unless the court, upon a showing of hardship by the person, allows the person additional time to pay the fee. If the person enrolling in the school demonstrates to the satisfaction of the court that ordered him to enroll in the school that he is unable to pay and his inability to pay is not willful, the court may excuse him from paying the fee.

(d1) The Department of Human Resources may approve programs offered in another state if they are substantially similar to programs approved in this State, and if that state recognizes North Carolina programs for similar purposes. The defendant shall be responsible for the fees at the approved program.

(1979, c. 358, s. 26; c. 903, s. 3; 1981, c. 51, s. 5; c. 466, ss. 1-3; 1983, c. 435, s. 30; c. 761, s. 155; 1985 (Reg. Sess., 1986), c. 1012, s. 1; 1987, c. 352, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective August 1, 1986, deleted the former last sentence of subsection (c), which read "If, however, the person is also ordered to serve a community service punishment under G.S. 20-179 and G.S. 20-179.4, the fee for enrollment in an Alcohol and Drug Education Traffic School program established pursuant to this section is fifty dollars ($50.00)."

The 1987 amendment, effective June 12, 1987, added subsection (d1).

§ 20-179.3. Limited driving privilege.

(b) Eligibility. — A person convicted of the offense of impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if:

(1) At the time of the offense he held either a valid driver's license or a license that had been expired for less than one year;

(2) At the time of the offense he had not within the preceding seven years been convicted of an offense involving impaired driving;

(3) Punishment Level Three, Four, or Five was imposed for the offense of impaired driving; and

(4) Subsequent to the offense he has not been convicted of, or had an unresolved charge lodged against him for, an offense involving impaired driving.

A person whose North Carolina driver's license is revoked because of a conviction in another jurisdiction substantially equivalent to impaired driving under G.S. 20-138.1 is eligible for a limited driving privilege if he would be eligible for it had the conviction occurred in North Carolina. Eligibility for a limited driving privilege following a revocation under G.S. 20-16.2(d) is governed by G.S. 20-16.2(e1).

(d) Application for and Scheduling of Subsequent Hearing. — The application for a limited driving privilege made at any time

after the day of sentencing must be filed with the clerk in duplicate, and no hearing scheduled may be held until a reasonable time after the clerk files a copy of the application with the district attorney's office. The hearing must be scheduled before:

(1) The presiding judge at the applicant's trial if that judge is assigned to a court in the judicial district in which the conviction for impaired driving was imposed.

(2) The senior regular resident superior court judge of the district in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in superior court.

(3) The chief district court judge of the district in which the conviction for impaired driving was imposed, if the presiding judge is not available within the district and the conviction was imposed in district court.

If the applicant was convicted of an offense in another jurisdiction, the hearing must be scheduled before the chief district court judge of the district in which he resides. G.S. 20-16.2(e1) governs the judge before whom a hearing is scheduled if the revocation was under G.S. 20-16.2(d). The hearing may be scheduled in any county within the judicial district.

(f) Overall Provisions on Use of Privilege. — Every limited driving privilege must restrict the applicant to essential driving related to the purposes listed in subsection (a), and any driving that is not related to those purposes is unlawful even though done at times and upon routes that may be authorized by the privilege. If the privilege is granted, driving related to emergency medical care is authorized at any time and without restriction as to routes, but all other driving must be for a purpose and done within the restrictions specified in the privilege.

(f1) Definition of "Standard Working Hours". — Under this section, "standard working hours" are 6:00 A.M. to 8:00 P.M. on Monday through Friday.

(g) Driving for Work-Related Purposes in Standard Working Hours. — In a limited driving privilege, the court may authorize driving for work-related purposes during standard working hours without specifying the times and routes in which the driving must occur. If the applicant is not required to drive for essential work-related purposes except during standard working hours, the limited driving privilege must prohibit driving during nonstandard working hours unless the driving is for emergency medical care or is authorized by subsection (g2). The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving in the discretion of the court.

(g1) Driving for Work-Related Purposes in Nonstandard Hours. — If the applicant is required to drive during nonstandard working hours for an essential work-related purpose, he must present documentation of that fact before the judge may authorize him to drive for this purpose during those hours. If the applicant is self-employed, the documentation must be attached to or made a part of the limited driving privilege. If the judge determines that it is necessary for the applicant to drive during nonstandard hours for a work-related purpose, he may authorize the applicant to drive subject to these limitations:

(1) If the applicant is required to drive to and from a specific place of work at regular times, the limited driving privilege must specify the general times and routes in which the applicant will be driving to and from work, and restrict driving to those times and routes.

(2) If the applicant is required to drive to and from work at a specific place, but is unable to specify the times at which that driving will occur, the limited driving privilege must specify the general routes in which the applicant will be driving to and from work, and restrict the driving to those general routes.

(3) If the applicant is required to drive to and from work at regular times but is unable to specify the places at which work is to be performed, the limited driving privilege must specify the general times and geographic boundaries in which the applicant will be driving, and restrict driving to those times and within those boundaries.

(4) If the applicant can specify neither the times nor places in which he will be driving to and from work, or if he is required to drive during these nonstandard working hours as a condition of employment, the limited driving privilege must specify the geographic boundaries in which he will drive and restrict driving to that within those boundaries.

The limited driving privilege must state the name and address of the applicant's place of work or employer, and may include other information and restrictions applicable to work-related driving, in the discretion of the court.

(g2) Driving for Other than Work-Related Purposes. — A limited driving privilege may not allow driving for maintenance of the household except during standard working hours, and the limited driving privilege may contain any additional restrictions on that driving, in the discretion of the court. The limited driving privilege must authorize driving essential to the completion of any community work assignments, course of instruction at an Alcohol and Drug Education Traffic School, or substance abuse assessment or treatment, to which the applicant is ordered by the court as a condition of probation for the impaired driving conviction. If this driving will occur during nonstandard working hours, the limited driving privilege must specify the same limitations required by subsection (g1) for work-related driving during those hours, and it must include or have attached to it the name and address of the Alcohol and Drug Education Traffic School, the community service coordinator, or mental health treatment facility to which the applicant is assigned. Driving for educational purposes other than the course of instruction at an Alcohol and Drug Education Traffic School is subject to the same limitations applicable to work related driving under subsections (g) and (g1).

(i) Modification or Revocation of Privilege. — A judge who issues a limited driving privilege is authorized to modify or revoke the limited driving privilege upon a showing that the circumstances have changed sufficiently to justify modification or revocation. If the judge who issued the privilege is not presiding in the court in which the privilege was issued, a presiding judge in that court may modify or revoke a privilege in accordance with this subsection. The judge must indicate in the order of modification or revocation the reasons for the order, or he must make specific findings indicating

the reason for the order and those findings must be entered in the record of the case.

(j) Effect of Violation of Restriction. — A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

(*l*) Any judge granting limited driving privileges under this section shall, prior to granting such privileges, be furnished proof and be satisfied that the person being granted such privileges is financially responsible. Proof of financial responsibility shall be in the form of a written certificate of any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. Such certificate shall state that the policy is in effect on the date such privileges are granted but shall not in and of itself constitute a binder or policy of insurance.

The preceding provisions of this subsection do not apply to applicants who do not own motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and who do not reside in a household wherein any other household member owns a motor vehicle. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purpose of this subsection "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 13C of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. Such granting of limited driving privileges shall be conditioned upon the maintenance of such financial responsibility during the period of the limited driving privilege. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter. (1983, c. 435, s. 31; 1983 (Reg. Sess., 1984), c. 1101, ss. 30-33; 1985, c. 706, s. 2; 1987, c. 869, s. 13.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984) c. 1101, s. 37, provides: "Section 32 of

this Act is effective upon ratification: Provided that a judge authorized to issue a limited driving privilege under G.S. 20-179.3(d) is authorized, upon application of a holder of a limited driving privilege who has been convicted of the offense of impaired driving under G.S. 20-138.1, to modify that limited driving privilege in accordance with G.S. 20-179.3, as amended by Section 32 of this act."

Session Laws 1983 (Reg. Sess., 1984), c. 1101, s. 38, makes ss. 3, 8, 13, 16, 22, 23, 34, 35 and 36 of the act effective October 1, 1984, and the remaining sections, except as provided in s. 37, effective upon ratification. The act was ratified July 6, 1984.

Session Laws 1987, c. 869, s. 19 is a severability clause.

Effect of Amendments. — The amendment by 1983 (Reg. Sess., 1984), c. 1101, ss. 30, 31 and 33, effective July 6, 1984, rewrote subdivision (b)(1), which read "At the time of the offense he held a valid driver's license," substituted "seven years" for "10 years" in subdivision (b)(2), substituted "at any time after the day of sentencing" for "subsequent to sentencing" in the first sentence of the introductory language of subsection (d), and inserted "driving while license revoked by" in the third sentence of subsection (j).

The amendment by Session Laws 1983 (Reg. Sess., 1984), c. 1101, s. 32, rewrote subsection (f), inserted subsection (f1), rewrote subsection (g), and inserted subsections (g1) and (g2). For effective date and additional provision applicable to this amendment, see the Editor's note, above.

The 1985 amendment, effective 30 days after ratification and applicable to offenses committed on and after that date, rewrote the second sentence of subsection (i), which read "If the judge who issued the limited driving privilege is not available, a judge authorized to issue a limited driving privilege under subsection (d) may modify or revoke a limited driving privilege in accordance with this subsection." The act was ratified July 11, 1985.

The 1987 amendment, effective January 1, 1988, added subsection (*l*).

CASE NOTES

Discretion of Court in Granting Privilege. — The granting or denying of a limited driving privilege pursuant to subsection (a) of this section is for good cause shown, the decision resting in the sound discretion of the trial court. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

Defendant has no entitlement to a limited driving privilege. State v. Sigmon, 74 N.C. App. 479, 328 S.E.2d 843 (1985).

Probable Cause to Approach Defendant. — Officer who had specific knowledge that defendant's license had been revoked, that defendant held a limited driving privilege, and that he might have been violating his privilege by driving for a social purpose had a reasonable or founded suspicion base on articulable facts sufficient to justify his approach of defendant in a public place and ask to see a valid license and North Carolina permit. State v. Badgett, 82 N.C. App. 270, 346 S.E.2d 281 (1986).

Evidence Held Insufficient to Support Conviction under Subsection (j). — State v. Cooney, 313 N.C. 594, 330 S.E.2d 206 (1985).

§ 20-179.4. Community service alternative punishment; responsibilities of the Department of Crime Control and Public Safety; fee.

(c) A fee of one hundred dollars ($100.00) must be paid by all persons serving a community service sentence. That fee must be paid to the clerk of court in the county in which the person is convicted. The fee must be paid in full within two weeks unless the court, upon a showing of hardship by the person, allows him additional time to pay the fee. The person may not be required to pay the fee before he begins the community service unless the court

specifically orders that he do so. If the person is also ordered to attend an Alcohol and Drug Education Traffic School established pursuant to G.S. 20-179.2, the fee for supervision of community service punishment is fifty dollars ($50.00).

(e) The coordinator must report to the court in which the community service was ordered a significant violation of the terms of the probation judgment related to community service. In such cases, the court must conduct a hearing to determine if there is a willful failure to comply. If the court determines there is a willful failure to pay the prescribed fee or to complete the work as ordered by the coordinator within the applicable time limits, the court must revoke any limited driving privilege issued in the impaired driving case, and in addition may take any further action authorized by Article 82 of General Statutes Chapter 15A for violation of a condition of probation. (1983, c. 761, s. 154; 1983 (Reg. Sess., 1984), c. 1101, ss. 34, 35.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Cross References. — For provision relating to a deferred prosecution, community service restitution, and volunteer program for youthful and adult offenders, which provides that one or more coordinators may be assigned to each judicial district to assure and report to the Court the offender's compliance with the requirements of the program, and authorizes the designation of the same person to serve as a coordinator under this section and under that section, see § 143B-475.1.

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256 is a severability clause.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment, effective October 1, 1984, substituted the present second through fourth sentences of subsection (c) for the former second and third sentences thereof, relating to the payment of the fee, and rewrote subsection (e).

§ 20-181. Penalty for failure to dim, etc., beams of headlamps.

Any person operating a motor vehicle on the highways of this State, who shall fail to shift, depress, deflect, tilt or dim the beams of the headlamps thereon whenever another vehicle is met on such highways or when following another vehicle at a distance of less than 200 feet, except when engaged in the act of overtaking and passing may, upon a determination of responsibility for the offense, be required to pay a penalty of not more than ten dollars ($10.00). (1939, c. 351, s. 3; 1955, c. 913, s. 1; 1987, c. 581, s. 5.)

Effect of Amendments. — The 1987 amendment, effective October 1, 1987, and applicable only to offenses committed on or after that date, substituted "may, upon a determination of responsibility for the offense, be required to pay a penalty of not more than ten dollars ($10.00)" for "shall, upon conviction thereof, be fined not more than ten dollars ($10.00) or imprisoned for not more than ten days."

CASE NOTES

Cited in State v. Roberts, 82 N.C. App. 733, 348 S.E.2d 151 (1986).

§ 20-183. Duties and powers of law-enforcement officers; warning by local officers before stopping another vehicle on highway; warning tickets.

CASE NOTES

Applied in State v. Davis, 66 N.C. App. 98, 311 S.E.2d 19 (1984).

Article 3A.

Motor Vehicle Law of 1947.

Part 2. Equipment Inspection of Motor Vehicles.

§ 20-183.7. Charges for inspections and certificates; safety equipment inspection station records.

(a) Every safety equipment inspection station shall charge a fee of four dollars and twenty-five cents ($4.25) for inspecting a motor vehicle to determine compliance with the safety inspection requirements of this Article and shall give the vehicle operater a dated receipt, indicating the articles and equipment approved and disapproved. At any time within 90 days thereafter, when the receipt is presented to the inspection station which issued it with a request for reinspection, that inspection station shall reinspect the vehicle at no charge. When said vehicle is approved, the inspection station shall obtain a fee of eighty cents (80¢) for a valid inspection certificate, and affix the certificate to that vehicle.

(a1) For inspection of vehicles required to be inspected under the inspection/maintenance provisions of G.S. 20-183.3(b), every safety equipment inspection station shall charge a fee of not less than four dollars and twenty-five cents ($4.25), nor more than ten dollars ($10.00), for inspecting a motor vehicle to determine compliance with the safety inspection requirements and the exhaust emission standards pursuant to the inspection/maintenance requirements of this Article and shall give the vehicle operator a dated receipt indicating the articles and equipment approved or disapproved and whether the vehicle met the emission control standards. If the vehicle is disapproved, at any time within 30 days thereafter when the receipt is presented to the inspection station which issued it with a request for reinspection, that inspection station shall reinspect the vehicle at no charge. When said vehicle is approved, the inspection station shall obtain a fee of not less than eighty cents (80¢) nor more than two dollars and twenty cents ($2.20) for a valid inspection certificate covering both the safety inspection requirements and the emission control inspection/maintenance requirements and affix the certificate to that vehicle. The amount of the fees under this subsection shall be set by the Commissioner of Motor Vehicles.

(c) Fees collected for inspection certificates shall be paid to the Division of Motor Vehicles in accordance with its regulations and shall be periodically transferred as follows:

(1) Seventy-five cents (75¢) of the fee for the valid inspection sticker collected pursuant to subsection (a) shall be transferred to the Highway Fund.

(2) The fee of not less than seventy-five cents (75¢) nor more than two dollars and fifteen cents ($2.15) collected pursuant to subsection (a1) shall be transferred as follows: the first thirty-five cents (35¢) to the Division of Environmental Management and any excess up to one dollar and eighty cents ($1.80) to the Highway Fund.

(3) Five cents (5¢) of the fee for the valid inspection sticker collected pursuant to subsections (a) and (a1) shall be transferred each quarter of the year to the North Carolina Commissioner of Insurance, for the purpose of funding the Rescue Squad Workers' Relief Fund under Article 5 of General Statute Chapter 118.

(1965, c. 734, s. 1; 1969, c. 1242; 1973, c. 1480; 1975, c. 547; c. 716, s. 5; c. 875, s. 4; 1979, c. 688; 1979, 2nd Sess., c. 1180, ss. 5, 6; 1981, c. 690, s. 17; 1981 (Reg. Sess., 1982), c. 1261, s. 2; 1985, c. 415, ss. 1-6; 1985 (Reg. Sess., 1986), c. 1018, s. 8; 1987, c. 584, ss. 1-3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1018, s. 9 provides that all funds remaining unencumbered in "The Safety Inspection Monitoring Fund" created by Session Laws 1985, c. 415 on July 1, 1986, shall revert to the Highway Fund.

Session Laws 1985 (Reg. Sess., 1986), c. 1018, s. 10 provides that the people hired to monitor the Equipment Inspection of Motor Vehicles previously receiving their compensation from "The Safety Inspection Monitoring Fund" shall be paid after July 1, 1986, from the Highway Fund.

Session Laws 1985 (Reg. Sess., 1986), c. 1018, s. 22 provides that insofar as the provisions of the act are inconsistent with the provisions of any general or special laws or parts thereof, the provisions of the act shall be controlling.

Session Laws 1985 (Reg. Sess., 1986), c. 1018, s. 23 is a severability clause.

Effect of Amendments. —

The 1985 amendment, effective January 1, 1986, substituted "four dollars and twenty-five cents ($4.25)" for "three dollars and sixty-five cents ($3.65)" and "seventy-five cents (75¢)" for "sixty cents (60¢)" in subsection (a), substituted "four dollars and twenty-five cents ($4.25)" for "three dollars and sixty-five cents ($3.65)" and "seventy-five cents (75¢) nor more than two dollars and fifteen cents ($2.15)" for "sixty cents (60¢) nor more than two dollars ($2.00)" in subsection (a1), and rewrote subdivisions (c)(1) and (c)(2).

The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, deleted "and the remaining monies shall be placed in the special fund to be designated 'The Safety Inspection Monitoring Fund' to be used at the direction of the Commissioner for monitoring the equipment inspection of motor vehicles" at the end of subdivision (c)(1) and substituted "and any excess up to one dollar and eighty cents ($1.80) to the Highway Fund" for "the next fifteen cents (15¢) to the 'State Safety Inspection Monitoring Fund' to be used at the direction of the Commissioner for monitoring the equipment inspection of motor vehicles, and any excess up to one dollar and sixty-five cents ($1.65) to the Highway Fund" at the end of subdivision (c)(2).

The 1987 amendment, effective September 1, 1987, substituted "eighty cents (80¢)" for "seventy-five cents (75¢)" in subsections (a) and (a1), substituted "two dollars and twenty cents ($2.20)" for "two dollars and fifteen cents ($2.15)" in subsection (a1), and added subdivision (c)(3).

§ 20-183.8. Commissioner of Motor Vehicles to issue regulations subject to approval of Governor; penalties for violation; fictitious or unlawful inspection certificate; 30-day grace period for expired inspection certificates.

(a) It is the intent of the Article that the provisions herein shall be carried out by the Commissioner of Motor Vehicles for the safety and convenience of the motoring public. The Commissioner shall have authority to promulgate only such regulations as are reasonably necessary for the purpose of carrying out the provisions of this inspection program, but such regulations shall not be effective until the same have been approved by the Governor.

(b) The Commissioner of Motor Vehicles is authorized to enter into agreements or arrangements with the duly authorized representatives of other jurisdictions whereby the safety equipment inspection required under this Article may be waived with respect to vehicles which have undergone substantially similar safety equipment inspections in such other jurisdictions and for which valid inspection certificates have been issued by such other jurisdictions. Such agreements or arrangements shall provide that vehicles inspected in this State and for which valid inspection certificates have been issued shall be accorded a similar privilege when subject to the laws of such other jurisdictions. Each such agreement or arrangement shall, in the judgment of the Commissioner, be in the best interest of this State and the citizens thereof and shall be fair and equitable to this State and citizens thereof; and all of the same shall be determined upon the basis and recognition of the benefits which accrue to the citizens of this State by reason of the agreement or arrangement.

The Commissioner is also authorized to promulgate rules and regulations providing that the safety equipment inspection may be waived with respect to any vehicle which has undergone a similar inspection in another jurisdiction and for which a valid and current inspection certificate has been issued by such other jurisdiction.

(c) Except for the unauthorized reproduction of an inspection sticker, violation of any provision of this Article is an infraction which carries a penalty of not more than fifty dollars ($50.00). The unauthorized reproduction of an inspection sticker is a forgery under G.S. 14-119.

(d) No person shall display or cause to be displayed or permit to be displayed upon any motor vehicle any inspection certificate, knowing the same to be fictitious or to be issued for another motor vehicle or to be issued without inspection and approval having been made. The Division is hereby authorized to take immediate possession of any inspection certificate which is fictitious or which has been otherwise unlawfully or erroneously issued or which has been unlawfully used.

(e) No person shall be convicted of failing to display current inspection certificate as provided under this Article if he produces in court at the time of his trial a receipt from a licensed motor vehicle inspection station showing that a valid inspection certificate was

issued for the vehicle involved within 30 days after expiration of the previous inspection certificate issued for the vehicle.

(f) It shall be unlawful for any person to attach an inspection certificate to a vehicle if he knows, or has reasonable grounds to know, that the required inspection has not been performed according to law, including rules and regulations promulgated by the Commissioner. (1965, c. 734, s. 1; 1967, c. 692, s. 3; 1969, c. 179, s. 1; c. 620; 1973, cc. 909, 1322; 1975, c. 716, s. 5; 1979, 2nd Sess., c. 1180, s. 4; 1985, c. 764, s. 23.)

Editor's Note. — Session Laws 1985, c. 764, s. 40, as amended by Session Laws 1985 (Reg. Sess., 1986), c. 852, s. 17, provides: "This act shall become effective September 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act [September 1, 1986] shall be governed by the law in effect at the time of the offense."

Effect of Amendments. — The 1985 amendment, effective September 1, 1986, and applicable to offenses committed on or after that date, rewrote subsection (c), and deleted the last sentence of subsection (d), which read "Any person violating the provisions of this subsection shall be guilty of a misdemeanor punishable by fine not to exceed fifty dollars ($50.00) or imprisonment not to exceed 30 days."

Article 4.

State Highway Patrol.

§ 20-187.2. Badges and service side arms of deceased or retiring members of State, city and county law-enforcement agencies; weapons of active members.

(a) Surviving spouses, or in the event such members die unsurvived by a spouse, surviving children of members of North Carolina State, city and county law-enforcement agencies killed in the line of duty or who are members of such agencies at the time of their deaths, and retiring members of such agencies shall receive upon request and at no cost to them, the badge worn or carried by such deceased or retiring members. The governing body of a law-enforcement agency may, in its discetion, also award to a retiring member or surviving relative as provided herein, upon request, the service side arm of such deceased or retiring members, at a price determined by such governing body, upon securing a permit as required by G.S. 14-402 et seq. or 14-409.1 et seq., or without such permit provided the weapon shall have been rendered incapable of being fired. Governing body shall mean for county and local alcohol beverage control officers, the county or local board of alcoholic control; for all other law-enforcement officers with jurisdiction limited to a municipality or town, the city or town council; for all other law-enforcement officers with countywide jurisdiction, the board of county commissioners; for all State law-enforcement officers, the head of the department.

(b) Active members of North Carolina State law-enforcement agencies, upon change of type of weapons, may purchase the weapon worn or carried by such member at a price which shall be the average yield to the State from the sale of similar weapons

during the preceding year. (1971, c. 669; 1973, c. 1424; 1975, c. 44; 1977, c. 548; 1979, c. 882; 1987, c. 122.)

Effect of Amendments. — The 1987 amendment, effective May 1, 1987, substituted "weapon" for "revolver" in the second sentence of subsection (a), and in subsection (b) substituted "weapons" for "revolvers" in two places and substituted "weapon" for "revolver."

§ 20-187.3. Quotas prohibited.

(a) The Secretary of Crime Control and Public Safety shall not make or permit to be made any order, rule, or regulation requiring the issuance of any minimum number of traffic citations, or ticket quotas, by any member or members of the State Highway Patrol. Pay and promotions of members of the Highway Patrol shall be based on their overall job performance and not on the basis of the volume of citations issued or arrests made. The provisions of G.S. 126-7 shall not apply to members of the State Highway Patrol. Members of the Highway Patrol shall, however, be subject to salary classes, ranges and longevity pay for service as are applicable to other State employees generally. Beginning July 1, 1985, and annually thereafter, each member of the Highway Patrol shall be granted a salary increase in an amount corresponding to the increments between steps within the salary range established for the class to which the member's position is assigned by the State Personnel Commission, not to exceed the maximum of each applicable salary range.

(b) The Secretary of Crime Control and Public Safety, subject to the availability of funds as authorized by the Director of the Budget, may place a member of the State Highway Patrol in any step in the salary range for the class to which the member is assigned based on the member's rank so that no member is in a step lower than others of the same rank who have held that rank for less time than that member. (1981, c. 429; 1983 (Reg. Sess., 1984), c. 1034, ss. 106, 107; c. 1116, s. 89.)

Editor's Note. — Section 37(e) of Session Laws 1985 (Reg. Sess., 1986), c. 1014, provides: "Notwithstanding the provisions of Section 19.1 of Chapter 1137 of the 1979 Session Laws as amended by Chapter 1053 of the 1981 Session Laws, G.S. 115C-12(9)a., G.S. 115C-12(16), G.S. 126-7, or any other provision of law other than G.S. 20-187.3(a) or G.S. 7A-102(c), no employee or officer of the public school system shall receive an automatic increment and no State employee or officer shall receive a merit increment during the 1986-87 fiscal year, except as otherwise permitted by this act."

Session Laws 1983 (Reg. Sess., 1984), c. 1034, s. 256, and c. 1116, s. 115, are severability clauses.

Effect of Amendments. — The 1983 (Reg. Sess., 1984) amendment by c. 1034, ss. 106 and 107, effective July 1, 1984, designated the first paragraph as subsection (a), added the third sentence of subsection (a), and added subsection (b).

The 1983 (Reg. Sess., 1984) amendment by c. 1116, s. 89, effective July 1, 1984, added the last two sentences of subsection (a).

§ 20-189. Patrolmen assigned to Governor's office.

The Secretary of Crime Control and Public Safety, at the request of the Governor, shall assign and attach two members of the State Highway Patrol to the office of the Governor, there to be assigned such duties and perform such services as the Governor may direct. The salary of the State highway patrolmen so assigned to the office of the Governor shall be paid from appropriations made to the office of the Governor and shall be fixed in an amount to be determined by the Governor. Prior to taking any action under the previous sentence, the Governor may consult with the Advisory Budget Commission. (1941, cc. 23, 36; 1965, c. 1159; 1977, c. 70, s. 13; 1983, c. 717, s. 6; 1985 (Reg. Sess., 1986), c. 955, ss. 2, 3.)

Editor's Note. —

Section 1 of Session Laws 1985 (Reg. Sess., 1986), c. 955 provides: "This act may be cited as the Separation of Powers Act of 1986."

Section 127 of Session Laws 1985 (Reg. Sess., 1986), c. 955 provides: "If any part of this act shall be declared invalid by any court, this shall not affect any other part of this act."

Effect of Amendments. —

The 1985 (Reg. Sess., 1986) amendment, effective July 1, 1986, deleted "after consultation with the Advisory Budget Commission" at the end of the second sentence and added the third sentence.

§ 20-190.3. Assignment of new highway patrol cars.

All new highway patrol cars, whether marked or unmarked, placed in service after July 1, 1985, shall be assigned to and used by troopers whose primary duties are in the field and by line sergeants and first sergeants. (1985, c. 757, s. 165; 1987, c. 738, s. 122.)

Editor's Note. — Session Laws 1985, c. 757, s. 211 makes this section effective July 1, 1985.

Session Laws 1987, c. 738, s. 1.1 provides c. 738 shall be known as "The Current Operations Appropriations Act of 1987."

Session Laws 1987, c. 738, s. 237 is a severability clause.

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, substituted "field and by line sergeants and first sergeants" for "field" at the end of the section.

§ 20-196. Statewide radio system authorized; use of telephone lines in emergencies.

The Secretary of Crime Control and Public Safety, through the State Highway Patrol Division is hereby authorized and directed to set up and maintain a statewide radio system, with adequate broadcasting stations so situate as to make the service available to all parts of the State for the purpose of maintaining radio contact with the members of the State Highway Patrol and other officers of the State, to the end that the traffic laws upon the highways may be more adequately enforced and that the criminal use of the highways may be prevented. The Secretary of Crime Control and Public Safety, through the State Highway Patrol Division, is hereby authorized to establish a plan of operation in accordance with Federal Communication Commission rules so that all certified law-enforcement officers within the State may use the law enforcement emergency frequency of 155.475MHz.

The Secretary of Crime Control and Public Safety is likewise authorized and empowered to arrange with the various telephone companies of the State for the use of their lines for emergency calls by the members of the State Highway Patrol, if it shall be found practicable to arrange apparatus for temporary contact with said telephone circuits along the highways of the State.

In order to make this service more generally useful, the various boards of county commissioners and the governing boards of the varius cities and towns are hereby authorized and empowered to provide radio receiving sets in the offices and vehicles of their various officers, and such expenditures are declared to be a legal expenditure of any funds that may be available for police protection. (1935, c. 324, s. 6; 1941, c. 36; 1957, c. 65, s. 11; 1973, c. 507, s. 5; 1975, c. 716, s. 5; 1977, c. 70, ss. 13, 14; c. 464, s. 34; 1983, c. 717, s. 7; 1987, c. 525.)

Effect of Amendments. — The 1987 amendment, effective July 1, 1987, added the last sentence of the first paragraph.

Article 6A.

Motor Carriers of Migratory Farm Workers.

§ 20-215.3: Repealed by Session Laws 1985, c. 454, s. 8, effective June 24, 1985.

Article 7.

Miscellaneous Provisions Relating to Motor Vehicles.

§ 20-217. Motor vehicles to stop for properly marked and designated school buses in certain instances; evidence of identity of driver.

(f) Expired.

(1925, c. 265; 1943, c. 767; 1947, c. 527; 1955, c. 1365; 1959, c. 909; 1965, c. 370; 1969, c. 952; 1971, c. 245, s. 1; 1973, c. 1330, s. 35; 1977, 2nd Sess., c. 1280, s. 4; 1979, 2nd Sess., c. 1323; 1983, c. 779, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected, it is not set out.

Editor's Note. —

Session Laws 1983, c. 779, which amended this section, formerly provided in s. 3 that the act should become effective October 1, 1983 and expire October 1, 1985 and that "G.S. 20-217 amended hereby shall not be effective on and after said date." However, Session Laws 1983, c. 779, s. 3 was amended by Session Laws 1985, c. 700, s. 1, to read: "This act shall become effective October 1, 1983. G.S. 20-217(f) shall expire October 1, 1987 and shall not be effective on and after that date."

Subsection (f), which related to the identity of the driver, is therefore set out above as expired.

OPINIONS OF ATTORNEY GENERAL

This section has no application to a "public vehicular area" as defined by § 20-4.01(32). See opinion of Attorney General to Mr. Alan Leonard, District Attorney, Twenty-Ninth Judicial District, — N.C.A.G. — (Mar. 9, 1987).

Passing a stopped school bus displaying a mechanical stop signal while receiving or discharging passengers on a driveway on school property, which is not a street or highway, does not violate this section. See opinion of Attorney General to Mr. Alan Leonard, District Attorney, Twenty-Ninth Judicial District, — N.C.A.G. — (Mar. 9. 1987).

§ 20-217.1: Repealed by Session Laws 1983, c. 779, s. 2, effective October 1, 1983.

Editor's Note. —

Session Laws 1983, c. 779, s. 3, formerly provided that the act should become effective October 1, 1983, and expire October 1, 1985, and further provided "G.S. 20-217 amended hereby shall not be effective on and after said date." However, as amended by Session Laws 1985, c. 700, s. 1, section 3 of c. 779 of Session Laws 1983 now reads: "This act shall become effective October 1, 1983. G.S. 20-217(f) shall expire October 1, 1987 and shall not be effective on and after that date."

§ 20-218. Standard qualifications for school bus drivers; speed limit.

(b) It shall be unlawful for any person to operate or drive a school bus loaded with children over the public roads of North Carolina at a greater rate of speed than 35 miles per hour, with the following exceptions:

(1) For school activity buses which are painted a different color from regular school buses and which are being used for transportation of students or others to or from places for participation in events other than regular classroom work, it shall be unlawful to operate such a school activity bus at a greater rate of speed than 55 miles per hour.

(2) For school buses or special buses with a capacity of 16 pupils or less that are used to transport students who are children with special needs, it shall be unlawful to operate the buses at a greater rate of speed than 45 miles per hour.

(3) For private school buses that pick up children at a central point and deposit the children at a single school, without picking up children along the way, it shall be unlawful to operate the buses at a greater rate of speed than 45 miles per hour.

(1937, c. 397, ss. 1-3; 1941, c. 21; 1943, c. 440; 1945, c. 216; 1957, cc. 139, 595; 1971, c. 293; 1977, c. 791, ss. 1, 2; c. 1102; 1979, c. 31, ss. 1, 2; c. 667, s. 36; 1981, c. 30; 1987, c. 337, s. 1.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1987 amendment, effective June 10, 1987, substituted "55 miles per hour" for "45 miles per hour" at the end of subdivision (b)(1).

§ 20-218.2. Speed limit for activity buses for nonprofit purpose.

It shall be unlawful for any person to operate an activity bus for a nonprofit organization for a nonprofit purpose which is being used for transportation of persons in connection with nonprofit activities in excess of 55 miles per hour.

Any person violating this section shall, upon conviction, be fined not more than fifty dollars ($50.00) or imprisoned for not more than 30 days. (1969, c. 1000, s. 2; 1987, c. 337, s. 2.)

Effect of Amendments. — The 1987 amendment, effective June 10, 1987, substituted "55 miles per hour" for "45 miles per hour" at the end of the first paragraph.

Article 9A.

Motor Vehicle Safety and Financial Responsibility Act of 1953.

§ 20-279.1. Definitions.

Legal Periodicals. —

For note on use of the family purpose doctrine when no outsiders are involved, in light of Carver v. Carver, 310 N.C. 669, 314 S.E.2d 739 (1984) see 21 Wake Forest L. Rev. 243 (1985).

CASE NOTES

Definition of "Owner," etc. —

In accord with main volume. Indiana Lumbermens Mut. Ins. Co. v. Unigard Indem. Co., 76 N.C. App. 88, 331 S.E.2d 741, cert. denied, 314 N.C. 666, 335 S.E.2d 494 (1985).

Ownership Does Not Pass until Transfer of Title Pursuant to § 20-72 (b). — For purposes of liability insurance coverage, ownership of a motor vehicle which requires registration under the Motor Vehicle Act of 1937 does not pass until transfer of legal title is effected as provided in § 20-72(b). Indiana Lumbermens Mut. Ins. Co. v. Unigard Indem. Co., 76 N.C. App. 88, 331 S.E.2d 741, cert. denied, 314 N.C. 666, 335 S.E.2d 494 (1985).

Where an insured driver has the unrestricted use and possession of an automobile, the certificate of title for which is retained by another, the car is "furnished for the regular use of" the insured driver, and thus not covered by the "non-owned" clause of the policy. Indiana Lumbermens Mut. Ins. Co. v. Unigard Indem. Co., 76 N.C. App. 88, 331 S.E.2d 741, cert. denied, 314 N.C. 666, 335 S.E.2d 494 (1985).

Applied in Wilfong v. Wilkins, 70 N.C. App. 127, 318 S.E.2d 540 (1984).

Cited in American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

§ 20-279.4. Information required in accident report.

Legal Periodicals. — For 1984 survey, "Employee Exclusion Clauses in Automobile Liability Insurance Policies," see 63 N.C.L. Rev. 1228 (1985).

§ 20-279.5. Security required unless evidence of insurance; when security determined; suspension; exceptions.

Legal Periodicals. — For 1984 survey, "Employee Exclusion Clauses in Automobile Liability Insurance Policies," see 63 N.C.L. Rev. 1228 (1985).

CASE NOTES

The legislative policy behind uninsured motorist insurance laws is not to divide liability among insurers or limit insurers' liability, but to protect the motorist to the extent the statute requires protection against a specific class of tortfeasors. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

There is nothing in the legislative scheme suggesting that insured persons should have to concern themselves with the liability insurance limits of tortfeasors; in fact, the very purpose of uninsured motorist coverage is to ameliorate that concern. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

Effect of Change in Uninsured Motorist Coverage by 1979 Amendment. — Motorists who contracted and paid premiums for uninsured motorist coverage after the effective date of the new limits provided in subsection (c) of this section by its 1979 amendment should receive coverage up to those higher limits. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

Motorists with existing policies, including uninsured motorist coverage, at the level specified in subsection (c) of this section prior to its 1979 amendment could not claim up to the new limits if they were struck by an uninsured motorist; if those insureds, before their routinely scheduled policy renewal, desired more uninsured motorist coverage at the higher level, they could renew their policies early. In the interim, they would not be in violation of the Motor Vehicle Safety and Financial Responsibility Act because they retained their existing, lower-limit policies, nor would their insurers be forced to assume additional, uncontracted for liability. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

"Stacking" or aggregating coverages under the compulsory uninsured motorist coverage requirement may occur where coverage is provided by two or more policies, each providing the mandatory minimum coverage. However, to the extent that the coverage provided by motor vehicle liability insurance policies exceeds the mandatory minimum coverage required by the statute, the additional coverage is voluntary, and is governed by the terms of the insurance contract. GEICO v. Herndon, 79 N.C. App. 365, 339 S.E.2d 472 (1986).

Applied in Wilfong v. Wilkins, 70 N.C. App. 127, 318 S.E.2d 540 (1984).

§ 20-279.6. Further exceptions to requirement of security.

Legal Periodicals. — For 1984 survey, "Employee Exclusion Clauses in Automobile Liability Insurance Policies," see 63 N.C.L. Rev. 1228 (1985).

§ 20-279.13. Suspension for nonpayment of judgment; exceptions.

CASE NOTES

A statute as free from ambiguity as this section requires no construction, only adherence. Wilfong v. Wilkins, 70 N.C. App. 127, 318 S.E.2d 540, cert. denied, 312 N.C. 498, 322 S.E.2d 566 (1984).

§ 20-279.15. Payment sufficient to satisfy requirements.

CASE NOTES

Applied in Wilfong v. Wilkins, 70 N.C. App. 127, 318 S.E.2d 540 (1984).

§ 20-279.16. Installment payment of judgments; default.

CASE NOTES

Applied in Wilfong v. Wilkins, 70 N.C. App. 127, 318 S.E.2d 540 (1984).

§ 20-279.21. "Motor vehicle liability policy" defined.

(b) Such owner's policy of liability insurance:

(1) Shall designate by explicit description or by appropriate reference all motor vehicles with respect to which coverage is thereby to be granted;

(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: twenty-five thousand dollars ($25,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars ($50,000) because of bodily injury to or death of two or more persons in any one accident, and ten thousand dollars ($10,000) because of injury to or destruction of property of others in any one accident; and

(3) No policy of bodily injury liability insurance, covering liability arising out of the ownership, maintenance, or use of any motor vehicle, shall be delivered or issued for delivery in this State with respect to any motor vehicle registered

or principally garaged in this State unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in subsection (c) of G.S. 20-279.5, under provisions filed with and approved by the Commissioner of Insurance, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles and hit-and-run motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided, an insured is entitled to secure additional coverage up to the limits of bodily injury liability in the owner's policy of liability insurance that he carries for the protection of third persons. Such provisions shall include coverage for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of injury to or destruction of the property of such insured, with a limit in the aggregate for all insureds in any one accident of up to the limits of property damage liability in the owner's policy of liability insurance, and subject, for each insured, to an exclusion of the first one hundred dollars ($100.00) of such damages. Such provision shall further provide that a written statement by the liability insurer, whose name appears on the certification of financial responsibility made by the owner of any vehicle involved in an accident with the insured, that such other motor vehicle was not covered by insurance at the time of the accident with the insured shall operate as a prima facie presumption that the operator of such other motor vehicle was uninsured at the time of the accident with the insured for the purposes of recovery under this provision of the insured's liability insurance policy. The coverage required under this subdivision shall not be applicable where any insured named in the policy shall reject the coverage. If the named insured rejects the coverage required under this subdivision, the insurer shall not be required to offer the coverage in any renewal, reinstatement, substitute, amended, altered, modified, transfer or replacement policy unless the named insured makes a written request for the coverage. Rejection of this coverage for policies issued after October 1, 1986, shall be made in writing by the named insured on a form promulgated by the North Carolina Rate Bureau and approved by the Commissioner of Insurance.

In addition to the above requirements relating to uninsured motorist insurance, every policy of bodily injury liability insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle, which policy is delivered or issued for delivery in this State, shall be subject to the following provisions which need not be contained therein.

a. A provision that the insurer shall be bound by a final judgment taken by the insured against an uninsured motorist if the insurer has been served with copy of summons, complaint or other process in the action against the uninsured motorist by registered or certified mail, return receipt requested, or in any manner

provided by law; provided however, that the determination of whether a motorist is uninsured may be decided only by an action against the insurer alone. The insurer, upon being served as herein provided, shall be a party to the action between the insured and the uninsured motorist though not named in the caption of the pleadings and may defend the suit in the name of the uninsured motorist or in its own name. The insurer, upon being served with copy of summons, complaint or other pleading, shall have the time allowed by statute in which to answer, demur or otherwise plead (whether such pleading is verified or not) to the summons, complaint or other process served upon it. The consent of the insurer shall not be required for the initiation of suit by the insured against the uninsured motorist: Provided, however, no action shall be initiated by the insured until 60 days following the posting of notice to the insurer at the address shown on the policy or after personal delivery of such notice to the insurer or its agent setting forth the belief of the insured that the prospective defendant or defendants are uninsured motorists. No default judgment shall be entered when the insurer has timely filed an answer or other pleading as required by law. The failure to post notice to the insurer 60 days in advance of the initiation of suit shall not be grounds for dismissal of the action, but shall automatically extend the time for the filing of an answer or other pleadings to 60 days after the time of service of the summons, complaint, or other process on the insurer.

b. Where the insured, under the uninsured motorist coverage, claims that he has sustained bodily injury as the result of collision between motor vehicles and asserts that the identity of the operator or owner of a vehicle (other than a vehicle in which the insured is a passenger) cannot be ascertained, the insured may institute an action directly against the insurer: Provided, in such event, the insured, or someone in his behalf, shall report the accident within 24 hours or as soon thereafter as may be practicable, to a police officer, peace officer, other judicial officer, or to the Commissioner of Motor Vehicles. The insured shall also within a reasonable time give notice to the insurer of his injury, the extent thereof, and shall set forth in such notice the time, date and place of such injury. Thereafter, on forms to be mailed by the insurer within 15 days following receipt of the notice of the accident to the insurer, the insured shall furnish to insurer such further reasonable information concerning the accident and the injury as the insurer shall request. If such forms are not so furnished within 15 days, the insured shall be deemed to have complied with the requirements for furnishing information to the insurer. Suit may not be instituted against the insurer in less than 60 days from the posting of the first notice of such injury or accident to the insurer at the address shown on the

policy or after personal delivery of such notice to the insurer or its agent.

Provided under this section the term "uninsured motor vehicle" shall include, but not be limited to, an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability within the limits specified therein because of insolvency.

An insurer's insolvency protection shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tort-feasor becomes insolvent within three years after such an accident. Nothing herein shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to the insured than is provided herein.

In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement for judgment resulting from the exercise of any limits of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

For the purpose of this section, an "uninsured motor vehicle" shall be a motor vehicle as to which there is no bodily injury liability insurance and property damage liability insurance in at least the amounts specified in subsection (c) of G.S. 20-279.5, or there is such insurance but the insurance company writing the same denies coverage thereunder, or has become bankrupt, or there is no bond or deposit of money or securities as provided in G.S. 20-279.24 or 20-279.25 in lieu of such bodily injury and property damage liability insurance, or the owner of such motor vehicle has not qualified as a self-insurer under the provisions of G.S. 20-279.33, or a vehicle that is not subject to the provisions of the Motor Vehicle Safety and Financial Responsibility Act; but the term "uninsured motor vehicle" shall not include:

a. A motor vehicle owned by the named insured;
b. A motor vehicle which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;
c. A motor vehicle which is owned by the United States of America, Canada, a state, or any agency of any of the foregoing (excluding, however, political subdivisions thereof);
d. A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or
e. A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

For purposes of this section "persons insured" means the named insured and, while resident of the same household, the spouse of any such named insured and relatives of either, while in a motor vehicle or otherwise, and any person who uses with the consent, expressed or implied, of the named insured, the motor vehicle to which the policy applies and a guest in such motor vehicle to which the policy applies or the personal representative of any of the above or any other person or persons in lawful possession of such motor vehicle.

(4) Shall, in addition to the coverages set forth in subdivisions (2) and (3) of this subsection, provide underinsured motorist coverage, to be used only with policies that are written at limits that exceed those prescribed by subdivision (2) of this section and that afford uninsured motorist coverage as provided by subdivision (3) of this subsection, in an amount equal to the policy limits for automobile bodily injury liability as specified in the owner's policy. An "uninsured motor vehicle," as described in subdivision (3) of this subsection, includes an "underinsured highway vehicle," which means a highway vehicle with respect to the ownership, maintenance, or use of which, the sum of the limits of liability under all bodily injury liability bonds and insurance policies applicable at the time of the accident is less than the applicable limits of liability under the owner's policy. For the purposes of this subdivision, the term "highway vehicle" means a land motor vehicle or trailer other than (i) a farm-type tractor or other vehicle designed for use principally off public roads and while not upon public roads, (ii) a vehicle operated on rails or crawler-treads, or (iii) a vehicle while located for use as a residence or premises. The provisions of subdivision (3) of this subsection shall apply to the coverage required by this subdivision. Underinsured motorist coverage shall be deemed to apply when, by reason of payment of judgment or settlement, all liability bonds or insurance policies providing coverage for bodily injury caused by the ownership, maintenance, or use of the underinsured highway vehicle have been exhausted. Exhaustion of such liability coverage for purpose of any single liability claim presented for underinsured motorist coverage shall be deemed to occur when either (a) the limits of liability per claim have been paid upon such claim, or (b) by reason of multiple claims, the aggregate per occurrence limit of liability has been paid. Underinsured motorist coverage shall be deemed to apply to the first dollar of an underinsured motorist coverage claim beyond amounts paid to the claimant pursuant to the exhausted liability policy.

In any event, the limit of underinsured motorist coverage applicable to any claim is determined to be the difference between the amount paid to the claimant pursuant to the exhausted liability policy and the total limits of the owner's underinsured motorist coverages provided in the owner's policies of insurance; it being the intent of this paragraph to provide to the owner, in instances where more than one policy may apply, the benefit of all limits of

liability of underinsured motorist coverage under all such policies: Provided that this paragraph shall apply only to nonfleet private passenger motor vehicle insurance as defined in G.S. 58-131.36(9) and (10).

An underinsured motorist insurer may at its option, upon a claim pursuant to underinsured motorist coverage, pay moneys without there having first been an exhaustion of the liability insurance policy covering the ownership, use, and maintenance of the underinsured highway vehicle. In the event of such payment, the underinsured motorist insurer shall be either: (a) entitled to receive by assignment from the claimant any right or (b) subrogated to the claimant's right regarding any claim the claimant has or had against the owner, operator, or maintainer of the underinsured highway vehicle, provided that the amount of the insurer's right by subrogation or assignment shall not exceed payments made to the claimant by the insurer. No insurer shall exercise any right of subrogation or any right to approve settlement with the original owner, operator, or maintainer of the underinsured highway vehicle under a policy providing coverage against an underinsured motorist where the insurer has been provided with written notice in advance of a settlement between its insured and the underinsured motorist and the insurer fails to advance a payment to the insured in an amount equal to the tentative settlement within 30 days following receipt of such notice. Further, the insurer shall have the right, at its election, to pursue its claim by assignment or subrogation in the name of the claimant, and the insurer shall not be denominated as a party in its own name except upon its own election. Assignment or subrogation as provided in this subdivision shall not, absent contrary agreement, operate to defeat the claimant's right to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for damages beyond those paid by the underinsured motorist insurer. The claimant and the underinsured motorist insurer may join their claims in a single suit without requiring that such insurer be named as a party. Any claimant who intends to pursue recovery against the owner, operator, or maintainer of the underinsured highway vehicle for moneys beyond those paid by the underinsured motorist insurer shall prior to doing so give notice to such insurer and give such insurer, at its expense, the opportunity to participate in the prosecution of such claim. Upon the entry of judgment in a suit upon any such claim in which the underinsured motorist insurer and claimant are joined, payment upon such judgment, unless otherwise agreed to, shall be applied pro rata to the claimant's claim beyond payment by the insurer of the owner, operator or maintainer of the underinsured highway vehicle and the claim of the underinsured motorist insurer.

A party injured by the operation of an underinsured highway vehicle who institutes a suit for the recovery of moneys for such injuries and in such an amount that, if recovered, would support a claim under underinsured motorist coverage shall give notice of the initiation of the suit

to the underinsured motorist insurer as well as to the insurer providing primary liability coverage upon the underinsured highway vehicle. Upon receipt of such notice, the underinsured motorist insurer shall have the right to appear in defense of such claim without being named as a party therein, and without being named as a party may participate in such suit as fully as if it were a party. The underinsured motorist insurer may elect, but may not be compelled, to appear in such action in its own name and present therein a claim against other parties; provided that application is made to and approved by a presiding superior court judge, in any such suit, any insurer providing primary liability insurance on the underinsured highway vehicle may upon payment of all of its applicable limits of liability be released from further liability or obligation to participate in the defense of such proceeding. However, prior to approving any such application, the court shall be persuaded that the owner, operator, or maintainer of the underinsured highway vehicle against whom a claim has been made has been apprised of the nature of the proceeding and given his right to select counsel of his own choice to appear in such action on his separate behalf. In the event that an underinsured motorist insurer, following the approval of such application, pays in settlement or partial or total satisfaction of judgment moneys to the claimant, such insurer shall be subrogated to or entitled to an assignment of the claimant's rights against the owner, operator, or maintainer of the underinsured highway vehicle and, provided that adequate notice of right of independent representation was given to such owner, operator, or maintainer, a finding of liability or the award of damages shall be res judicata between the underinsured motorist insurer and the owner, operator, or maintainer of underinsured highway vehicle.

The coverage required under this subdivision shall not be applicable where any insured named in the policy rejects the coverage.

If the named insured rejects the coverage required under this subdivision, the insurer shall not be required to offer the coverage in any renewal, reinstatement, substitute, amended, altered, modified, transfer or replacement policy unless the named insured makes a written request for the coverage. Rejection of this coverage for policies issued after October 1, 1986, shall be made in writing by the named insured on a form promulgated by the North Carolina Rate Bureau and approved by the Commissioner of Insurance.

(1953, c. 1300, s. 21; 1955, c. 1355; 1961, c. 640; 1965, c. 156; c. 674, s. 1; c. 898; 1967, c. 277, s. 4; c. 854; c. 1159, s. 1; c. 1162, s. 1; c. 1186, s. 1; c. 1246, s. 1; 1971, c. 1205, s. 2; 1973, c. 745, s. 4; 1975, c. 326, ss. 1, 2; c. 716, s. 5; c. 866, ss. 1-4; 1979, cc. 190, 675; c. 832, ss. 6, 7; 1983, c. 777, ss. 1, 2; 1985, c. 666, s. 74; 1985 (Reg. Sess., 1986), c. 1027, ss. 41, 42; 1987, c. 529.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Editor's Note. —

Session Laws 1985 (Reg. Sess., 1986), c. 1027, s. 57, contains a severability clause.

Effect of Amendments. —

The 1985 amendment, effective October 1, 1985, substituted "in an amount

equal to" for "but not to exceed" near the end of the first sentence of subdivision (4), substituted the present fifth through seventh sentences of the first paragraph of subdivision (b)(4), along with the second, third, and fourth paragraphs of that subdivision, for a former fifth sentence of the first paragraph. The former sixth sentence of the first paragraph is now the final paragraph of that subdivision.

The 1985 (Reg. Sess., 1986) amendment, effective October 1, 1986, rewrote the proviso at the end of the first sentence of the first paragraph of subdivision (b)(3) and substituted "up to the limits of property damage liability in the owner's policy of liability insurance" for "ten thousand dollars ($10,000)" in the second sentence of the first paragraph of subdivision (b)(3). The amendment also added the last sentence of the first paragraph of subdivision (b)(3) and added the last paragraph of subdivision (b)(4).

The 1987 amendment, effective October 1, 1987, added the last sentence of paragraph (b)(3)a.

Legal Periodicals. — For 1984 survey, "Employee Exclusion Clauses in Automobile Liability Insurance Policies," see 63 N.C.L. Rev. 1228 (1985).

For note on use of the family purpose doctrine when no outsiders are involved, in light of Carver v. Carver, 310 N.C. 669, 314 S.E.2d 739 (1984), see 21 Wake Forest L. Rev. 243 (1985).

For note, "Underinsured Motorist Coverage: Legislative Solutions to Settlement Difficulties," see 64 N.C.L. Rev. 1408 (1986).

CASE NOTES

IV. Underinsured Motorist Coverage.

I. GENERAL CONSIDERATION.

The manifest purpose of this Article, etc.

The primary purpose of the compulsory motor vehicle liability insurance required by North Carolina's Financial Responsibility Act is to compensate innocent victims who have been injured by financially irresponsible motorists. Furthermore, the act is to be liberally construed so that the beneficial purpose intended by its enactment may be accomplished. South Carolina Ins. Co. v. Smith, 67 N.C. App. 632, 313 S.E.2d 856, cert. denied, 311 N.C. 306, 317 S.E.2d 682 (1984).

Supplemental Effect of § 20-281. — Section 20-281, which applies specifically to automobile owners who lease their cars for profit, is a companion section to and supplements this section, which applies to automobile owners generally. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

Section 20-281 is a source of mandatory terms for automobile liability insurance policies in addition to and independent of this section. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

A compulsory motor vehicle insurance act is a remedial statute, etc. —

In accord with 1st paragraph in the main volume. See State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 78 N.C. App. 542, 337 S.E.2d 866 (1985), aff'd, 318 S.E.2d 534, 350 S.E.2d 66 (1986).

The provisions of this section are written into every policy, etc. —

In accord with 3rd paragraph in original. American Tours, Inc. v. Liberty Mut. Ins. Co., 68 N.C. App. 668, 316 S.E.2d 105, cert. granted, 311 N.C. 750, 321 S.E.2d 125 (1984).

When the insuring language of the policy conflicts with the coverage mandated by this section, the provisions of the statute will control. State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 78 N.C. App. 542, 337 S.E.2d 866 (1985), aff'd, 318 S.E.2d 534, 350 S.E.2d 66 (1986), reading into insurance policy coverage for damages arising out of the use of an automobile.

Exclusionary Provisions Contravening Article Are Void. —

An exclusion which attempts to limit the protection available to those designated as insureds to only the insured vehicle would be contrary to subdivision (b)(3) of this section and void. Crowder v. North Carolina Farm Bureau Mut. Ins. Co., 79 N.C. App. 551, 340 S.E.2d 127, cert. denied, 316 N.C. 731, 345 S.E.2d 387 (1986).

In essence, subdivision (b)(3) of this section establishes two "classes" of "persons insured": (1) The named insured and, while resident of the same household, the spouse of the named in-

sured and relatives of either and (2) any person who uses with the consent, express or implied, of the named insured, the insured vehicle, and a guest in such vehicle. The latter class are "persons insured" under this section only when the insured vehicle is involved, while the former class are "persons insured" even where the insured vehicle is not involved in the insured's injuries. Crowder v. North Carolina Farm Bureau Mut. Ins. Co., 79 N.C. App. 551, 340 S.E.2d 127, cert. denied, 316 N.C. 731, 345 S.E.2d 387 (1986).

The words "arising out of", etc. — For purposes of determining whether an injury is covered by policy or statutory language extending coverage to loss "arising out of the use" of a motor vehicle, the use need not be the proximate cause of the injury in the narrow legal sense. Coverage will be extended if there is a reasonable causal connection between the use and the injury. State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 78 N.C. App. 542, 337 S.E.2d 866 (1985).

The test for determining whether an automobile liability policy provides coverage for an accident is not whether the automobile was a proximate cause of the accident. Instead, the test is whether there is a causal connection between the use of the automobile and the accident. State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 318 N.C. 534, 350 S.E.2d 66 (1986).

Where the cause of injury is distinctly independent of the use of the vehicle, no causal connection can be said to exist, and coverage will not be afforded. State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 78 N.C. App. 542, 337 S.E.2d 866 (1985).

Injury in Reaching into Truck for Rifle. — Where the insured frequently used his insured truck for hunting, the transportation of firearms being an integral part of that activity, and at the time of the accident, the insured was reaching into the cab for his rifle in order to shoot a deer, the requisite causal connection between victim's injury and the use of the truck was present, and thus the injury arose out of the use of the truck so as to be within the coverage provided by the automobile liability insurance policy. State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 78 N.C. App. 542, 337 S.E.2d 866 (1985).

Injuries to Third Party from Rifle Which Discharged While Being Removed. — Automobile liability policy which, when properly construed, provided coverage for damages arising out of the ownership, maintenance, or use of the insured's automobile provided coverage from injuries to third party resulting when rifle accidentally discharged while being removed from the motor vehicle by the insured. State Capital Ins. Co. v. Nationwide Mut. Ins. Co., 318 N.C. 534, 350 S.E.2d 66 (1986).

Admissibility of Insurer's Statements Regarding Coverage. — A written statement by the liability insurer creates a prima facie presumption of an operator's underinsurance as well as uninsurance. By establishing a prima facie presumption of underinsurance for such written statements, subdivisions (b)(3) and (b)(4) of this section implicitly make such statements admissible into evidence in order to trigger the operation of the presumption. Crowder v. North Carolina Farm Bureau Mut. Ins. Co., 79 N.C. App. 551, 340 S.E.2d 127, cert. denied, 316 N.C. 731, 345 S.E.2d 387 (1986).

Additional coverage is voluntary and the liability of the carrier for such coverage must be determined according to the terms and conditions of the binder. Roseboro Ford, Inc. v. Bass, 77 N.C. App. 263, 335 S.E.2d 214 (1985).

And Is Not Subject to Requirements, etc., —

To the extent that coverage provided by motor vehicle liability insurance policies exceeds the mandatory minimum coverage required by statute, the additional coverage is voluntary, and is governed by the terms of the insurance contract. Nationwide Mut. Ins. Co. v. Massey, 82 N.C. App. 448, 346 S.E.2d 268 (1986).

In general, liability insurance coverage in excess of the amounts required under subdivision (b)(2) of this section is voluntary and not controlled by the provisions of the act. Subdivision (g) of this section specifically excludes such coverage in addition to and in excess of that required by subdivision (b)(2) of this section. Aetna Cas. & Sur. Co. v. Younts, — N.C. App. —, 352 S.E.2d 850 (1987).

Stacking of Coverage. — Policy provisions which require that the terms of the policy should "apply separately" to separate automobiles insured under a single policy would allow stacking of medical payments coverages, except where there was unambiguous language establishing that the per accident limitations applied regardless of the number

of automobiles insured under the policy or other unambiguous language tying the coverages to specific automobiles. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

Absolute Obligation to Defend. — The obligation of a liability insurer to defend an action brought by an injured third party against the insured is absolute when the allegations of the complaint bring the claim within the coverage of the policy. Indiana Lumbermen's Mut. Ins. Co. v. Champion, 80 N.C. App. 370, 343 S.E.2d 15 (1986).

An insurer's refusal to defend is unjustified if it is determined that the action is in fact within the coverage of the policy. This is so even if the refusal to defend is based on the insurer's honest but mistaken belief that the claim is outside the policy coverage. Indiana Lumbermen's Mut. Ins. Co. v. Champion, 80 N.C. App. 370, 343 S.E.2d 15 (1986).

Insurer Unjustifiedly Refusing to Defend Not Entitled to Invoke "No Action" Provision. — Where claim against insured was within the coverage of insurer's policy, insurer's refusal to defend the action was unjustified, and therefore insurer was not entitled to successfully invoke the "no action" provision in its policy as a defense. Indiana Lumbermen's Mut. Ins. Co. v. Champion, 80 N.C. App. 370, 343 S.E.2d 15 (1986).

Applied in Wilfong v. Wilkins, 70 N.C. App. 127, 318 S.E.2d 540 (1984).

Stated in Gardner v. North Carolina State Bar, 316 N.C. 285, 341 S.E.2d 517 (1986).

Cited in Nationwide Mut. Ins. Co. v. Land, 318 N.C. 551, 350 S.E.2d 500 (1986).

II. THE OMNIBUS CLAUSE.

Liberal Construction in Interpreting Scope, etc. —

In accord with 1st paragraph in the main volume. See Pemberton v. Reliance Ins. Co., 83 N.C. App. 289, 350 S.E.2d 103 (1986).

At least three classes of persons using an insured automobile must be covered by the omnibus clause: (1) persons named in the insurance policy ("the person named therein"), (2) "original permittees," that is, persons using a vehicle with the express or implied permission of the named insured, and (3) other persons in lawful possession, including "second permittees," that is, third parties using a vehicle with the permission of an "original permittee." Pemberton v. Reliance Ins. Co., 83 N.C. App. 289, 350 S.E.2d 103 (1986).

No Recovery Where Driver Had Neither Permission Nor Lawful Possession. — Subdivision (b)(2) of this section does not permit victims of accidents to recover from the owner of a motor vehicle, or his insurer, where the offending driver of the vehicle had neither permission to drive it nor lawful possession of it. Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985), aff'd, 318 N.C. 551, 350 S.E.2d 500 (1986).

Permission May Be Expressed, etc. —

In accord with 2nd paragraph in main volume. See Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985), aff'd, 318 N.C. 551, 350 S.E.2d 500 (1986).

Who May Grant Permission. —

A person is in lawful possession of a vehicle under an omnibus clause if he is given possession of the automobile by the automobile's owner or owner's permittee under a good faith belief that giving possession of the vehicle to the third party would not be in violation of any law or contractual obligation. Belasco v. Nationwide Mut. Ins. Co., 73 N.C. App. 413, 326 S.E.2d 109, cert. denied, 313 N.C. 596, 332 S.E.2d 177 (1985).

Use Held with Permission. — Evidence was sufficient to show that driver's brother was an "original permittee" of the car's owner, another brother, and that he gave lawful possession of the car to driver within the meaning of subdivision (b)(2) of this section. Pemberton v. Reliance Ins. Co., 83 N.C. App. 289, 350 S.E.2d 103 (1986).

Use Held Without Permission. —

While an individual's initial use of an automobile was permitted under the terms of a written lease and was subject to the terms thereof, once he defaulted and failed to return the car as demanded by Bank-Lessor, his continued use was a material deviation from the permission granted in the lease. As such, it was not a permissive use within the meaning of Bank's insurance policy or subdivision (b)(2) of this section. Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985), aff'd, 318 N.C. 551, 350 S.E.2d 500 (1986).

III. UNINSURED MOTORIST COVERAGE.

Purpose of Uninsured Motorist Provisions. —

In accord with 1st paragraph in the main volume. See Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

The legislative policy behind uninsured motorist insurance laws is not to divide liability among insurers or limit insurers' liability, but to protect the motorist to the extent the statute requires protection against a specific class of tortfeasors. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

There is nothing in the legislative scheme suggesting that insured persons should have to concern themselves with the liability insurance limits of tortfeasors; in fact, the very purpose of uninsured motorist coverage is to ameliorate that concern. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

Subdivision (b)(3)b of this section requires physical contact between the vehicle operated by the insured motorist and the vehicle operated by the hit-and-run driver for the uninsured motorist provisions of the statute to apply. McNeil v. Hartford Accident & Indem. Co., — N.C. App. —, 352 S.E.2d 915 (1987).

If plaintiff can show at trial that a collision occurred between the hit-and-run vehicle and another vehicle and that this collision propelled that vehicle into a third vehicle, and that this second collision propelled the third vehicle into plaintiff's vehicle, then under these circumstances, the physical contact requirement has been satisfied, albeit intermediately and indirectly. McNeil v. Hartford Accident & Indem. Co., — N.C. App. —, 352 S.E.2d 915 (1987).

Effect of Increase in Coverage under 1979 Amendment. — Motorists with existing policies including uninsured motorist coverage at the level specified in § 20-279.5(c) prior to its 1979 amendment could not claim up to the new limits if they were struck by an uninsured motorist; if those insureds, before their routinely scheduled policy renewal, desired more uninsured motorist coverage at the higher level, they could renew their policies early. In the interim, they would not be in violation of the Motor Vehicle Safety and Financial Responsibility Act because they retained their existing, lower-limit policies, nor would their insurers be forced to assume additional, uncontracted for liability. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

Motorists who contracted and paid premiums for uninsured motorist coverage after the effective date of the new limits provided in § 20-279.5(c) following its 1979 amendment should receive coverage up to those higher limits. Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

Insured Is Not Limited to One Recovery, etc. —

In accord with the main volume. See Hamilton v. Travelers Indem. Co., 77 N.C. App. 318, 335 S.E.2d 228 (1985), cert. denied, 315 N.C. 587, 341 S.E.2d 25 (1986).

"Stacking" or aggregating coverages under the compulsory uninsured motorists coverage requirement may occur where coverage is provided by two or more policies, each providing the mandatory minimum coverage. However, to the extent that the coverage provided by motor vehicle liability insurance policies exceeds the mandatory minimum coverage required by the statute, the additional coverage is voluntary, and is governed by the terms of the insurance contract. GEICO v. Herndon, 79 N.C. App. 365, 339 S.E.2d 472 (1986).

The authority of the court to tax costs in an action to recover under uninsured motorist provisions of an insurance policy is not dependent on either the insurance policy or subdivision (b)(3) of this section. Ensley v. Nationwide Mut. Ins. Co., 80 N.C. App. 512, 342 S.E.2d 567, cert. denied, 318 N.C. 414, 349 S.E.2d 596 (1986).

IV. UNDERINSURED MOTORIST COVERAGE.

Limits of Coverage. — Subdivision (b)(4) of this section provides that the limit of payment for underinsured motorist coverage is only the difference between the liability insurance that is applicable (the limit on the tortfeasor's liability coverage) and the limits of the undersigned motorist coverage as specified

in the owner's policy (the limit on the undersigned motorist coverage in the plaintiff's policy with the defendant). Davidson v. United States Fid. & Guar. Co., 78 N.C. App. 140, 336 S.E.2d 709 (1985), aff'd, 316 N.C. 551, 342 S.E.2d 523 (1986).

Where the unambiguous terms of plaintiff's underinsured motorist coverage provided that any amount payable by the defendant would be reduced by all sums paid because of bodily injury by those legally responsible, the $25,000.00 limit on the plaintiff's underinsured motorist coverage would be reduced by the $25,000.00 which the plaintiff received in settlement from tortfeasor, leaving nothing due to plaintiff from defendant. Davidson v. United States Fid. & Guar. Co., 78 N.C. App. 140, 336 S.E.2d 709 (1985), aff'd, 316 N.C. 551, 342 S.E.2d 523 (1986).

Underinsured Motorist Endorsement Held Applicable to Insured Riding in Nonowned Vehicle. — Plaintiff, who was injured while riding as a passenger in a Jeep owned and operated by another individual, was covered by his father's policy, which contained an underinsured motorist endorsement, even though his injuries were unrelated to the use or operation of his father's van, which was the insured vehicle under the policy. Crowder v. North Carolina Farm Bureau Mut. Ins. Co., 79 N.C. App. 551, 340 S.E.2d 127, cert. denied, 316 N.C. 731, 345 S.E.2d 387 (1986), expressly limiting its holding to allowing underinsured motorist coverage for insureds operating, or riding in, a nonowned vehicle.

§ 20-279.34. North Carolina Automobile Insurance Plan.

Legal Periodicals. — For 1984 survey, "Employee Exclusion Clauses in Automobile Liability Insurance Policies," see 63 N.C.L. Rev. 1228 (1985).

Article 11.

Liability Insurance Required of Persons Engaged in Renting Motor Vehicles.

§ 20-281. Liability insurance prerequisite to engaging in business; coverage of policy.

CASE NOTES

Coverage Requirement Is Reasonable. — The requirement of this section that policies which insure automobile lessors provide coverage for lessees and their agents is reasonable in light of the statute's purpose. A lessor's insurance should cover lessees because lessees are unlikely to purchase insurance on account of what may be the temporary nature of a rental arrangement. A lessor's insurance also should cover lessees' agents because, being mere agents, they are also unlikely to obtain their own insurance. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

The public policy expressed in this section is that even where automobile rental agreements are violated it is preferable to provide coverage for innocent motorists rather than to deny such coverage because of the violation. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

Section Is in Addition to § 20-279.21. — This section is a source of mandatory terms for automobile liability insurance policies in addition to and independent of § 20-279.21. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

This section, which applies specifically to automobile owners who lease their cars for profit, is a companion section to and supplements § 20-279.21, which applies to automobile owners generally. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

A liability policy issued to one in the business of renting cars must comply with both § 20-281 and this section and provide all coverages required by both sections. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

Section Provides Coverage to Lessees and Their Agents. — In every automobile liability policy insuring automobile lessors, this section provides coverage to lessees and lessees' agents. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986), holding that if 19 year old was an agent of her father, the lessee, this section required that she be covered, even though she did not have lessors' permission to use the car.

Amount of Coverage. — When an automobile insurance policy providing coverage in amounts in excess of that statutorily required contains substantive coverages less than those statutorily required, the insurer's liability for an accident for which the statute requires but the policy does not provide coverage is limited to the minimum amount of coverage required by statutes. American Tours, Inc. v. Liberty Mut. Ins. Co., 315 N.C. 341, 338 S.E.2d 92 (1986).

This section did not extend insurance coverage, etc. —

In view of lessee's default and the efforts of the lessor to repossess the automobile, no lessor-lessee relationship existed at the time of collision involving the lessee, nor did the lessee have express or implied permission to operate the vehicle, and the policy insuring the lessor afforded no coverage under this section. Nationwide Mut. Ins. Co. v. Land, 318 N.C. 551, 350 S.E.2d 500 (1986).

Extension of Coverage until Relationship Is Terminated. — The Legislature intended that coverage under this section should be extended until such times as there has been a clear termination of the relationship of lessor-lessee. Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985), aff'd, 318 N.C. 551, 350 S.E.2d 500 (1986).

Breach or Default by Lessee. — An insurer who issues a policy to satisfy the requirements of this section is not relieved from its duty to provide coverage for a lessee upon a mere breach of an automobile lease agreement, or even upon a default in its terms. Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985), aff'd, 318 N.C. 551, 350 S.E.2d 500 (1986).

Conversion by Lessee. — Where individual's continued possession of automobile, after bank had given him notice that he was in default and demanded possession of the automobile, was adverse to the rights of bank as owner and lessor and amounted to a conversion of the automobile, the relationship of lessor-lessee ceased to exist. Therefore such individual was not operating the automobile as banks lessee at the time of collision some 12 months thereafter, and bank's insurer was not required by this section to extend coverage for personal injuries caused by defendant's operation of the automobile. Nationwide Mut. Ins. Co. v. Land, 78 N.C. App. 342, 337 S.E.2d 180 (1985), aff'd, 318 N.C. 551, 350 S.E.2d 500 (1986).

Applied in American Tours, Inc. v. Liberty Mut. Ins. Co., 68 N.C. App. 668, 316 S.E.2d 105 (1984).

Cited in Belasco v. Nationwide Mut. Ins. Co., 73 N.C. App. 413, 326 S.E.2d 109 (1985).

Article 12.

Motor Vehicle Dealers and Manufacturers Licensing Law.

§ 20-285. Regulation of motor vehicle distribution in public interest.

Legal Periodicals. — For 1984 survey on commercial law, "Green Light to Territorial Security for Automobile Dealers," see 63 N.C.L. Rev. 1080 (1985).

§ 20-286. Definitions.

Unless the context otherwise requires, the following words and terms, for the purpose of this Article, shall have the following meanings:

(11) "Motor vehicle dealer" and "dealer" mean any person, firm, association, or corporation engaged in the business of selling motor vehicles, or who holds or held at the time a cause of action under this Article accrued, a valid sales and service agreement, franchise or contract, granted by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new motor vehicles.

The term "motor vehicle dealer" or "dealer" does not include:

a. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court; or

b. Public officers while performing their official duties; or

c. Persons disposing of motor vehicles acquired for their own use and actually so used, when the same shall have been so acquired and used in good faith and not for the purpose of avoiding the provisions of this Article; or

d. Persons, firms or corporations who shall sell motor vehicles as an incident to their principal business but who are not engaged primarily in the selling of motor vehicles. This category includes finance companies who shall sell repossessed motor vehicles and insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance and who do not maintain a used car lot or building with one or more employed motor vehicle salesmen.

e. Persons, firms or corporations manufacturing, distributing or selling trailers and semitrailers weighing not more than 750 pounds and carrying not more than 1,500 pound load.

f. A licensed real estate broker or salesman who sells a mobile home for the owner as an incident to the sale of land upon which the mobile home is located.

(1955, c. 1243, s. 2; 1967, c. 1126, s. 1; c. 1173; 1973, c. 1330, s. 39; 1977, c. 560, s. 1; 1983, c. 312; c. 704, ss. 2, 3, 21; 1987, c. 381.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1987 amendment, effective June 16, 1987, substituted "engaged in the business of selling motor vehicles, or who holds or held" for "engaged in the business of selling, soliciting, or advertising the sale of motor vehicles, and who holds or held" near the beginning of the first paragraph of subdivision (11).

Legal Periodicals. — For 1984 survey on commercial law, "Green Light to Territorial Security for Automobile Dealers," see 63 N.C.L. Rev. 1080 (1985).

§ 20-288. Application for license; information required and considered; expiration of license; supplemental license; bond.

(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, distributor branch, or factory branch shall furnish a corporate surety bond or cash bond or fixed value equivalent thereof in the principal sum of fifteen thousand dollars ($15,000) and an additional principal sum of five thousand dollars ($5,000) for each additional place of business within this State at which motor vehicles are sold. Each application for a license or a renewal of a license shall be accompanied by a list of locations at which the applicant engages in the business of selling motor vehicles in this State. A corporate surety bond shall be approved by the Commissioner as to form and shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof shall be approved by the Commissioner as to form and terms of deposits as will secure the ultimate beneficiaries of the bond; and such bond shall not be available for delivery to any person contrary to the rules of the Commissioner. Any purchaser of a motor vehicle who shall have suffered any loss or damage by any act of a motor vehicle dealer that constitutes a violation of this Article or Article 15 shall have the right to institute an action to recover against such motor vehicle dealer and the surety. Every licensee against whom such action is instituted shall notify the Commissioner of the action within 10 days after process is served on the licensee. A corporate surety bond shall remain in force and effect and may not be canceled by the surety unless the motor vehicle dealer, manufacturer, distributor branch, or factory branch has terminated the operations of its business nor unless its license has been denied, suspended, or revoked under G.S. 20-294. Such cancellation may be had only upon 30 days' written notice to the Commissioner and shall not affect any liability incurred or accrued prior to the termination of such 30-day period. Provided nothing herein shall apply to a motor vehicle dealer, manufacturer, distributor branch or factory branch which deals only in trailers having an empty weight of 4,000 pounds or less. This subsection shall not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12. (1955, c. 1243, s. 4; 1975, c. 716, s. 5; 1977, c. 560, s. 2; 1979, c. 254; 1981, c. 952, s. 3; 1985, c. 262.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — The 1985 amendment, effective January 1, 1986, inserted "and Article 15" in the third sentence of subsection (e) and inserted "Or Article 15" in the fifth sentence of subsection (e).

CASE NOTES

Only purchasers of motor vehicles may recover under a motor vehicle surety bond. Fink v. Stallings 601 Sales, Inc., 64 N.C. App. 604, 307 S.E.2d 829 (1983).

Joint Venturer Not Eligible to Re-

cover on Bond. — Although plaintiff's testimony indicated that he tendered money to defendant and received title to a cadillac in return, the relationship of the parties was primarily that of joint venturers rather than seller-purchaser; whereby the two engaged in a short-term business deal for joint profit, with contributions of effort from each and risk taken by each, and as a joint venturer, plaintiff was not a purchaser under the ordinary meaning of the word and therefore could not recover on the bond secured to comply with this section. Taylor v. Johnson, 84 N.C. App. 116, 351 S.E.2d 831 (1987).

Accrual of Cause of Action Against Surety. — Causes of action of truck purchaser against dealer and against dealer's surety under a motor vehicle dealer surety bond both arose when purchaser discovered dealer's breach of contract or fraud, and could be no later than the date on which purchaser filed a complaint against the dealer in the superior court. And as nothing prevented purchaser from joining both defendants in one action or from instituting a separate action against surety while the case against dealer was pending, the three-year statute of limitations of § 1-52(1) was not tolled. Bernard v. Ohio Cas. Ins. Co., 79 N.C. App. 306, 339 S.E.2d 20 (1986).

§ 20-294. Grounds for denying, suspending or revoking licenses.

A license may be denied, suspended or revoked on any one or more of the following grounds:

(2) Willful and intentional failure to comply with any provision of this Article or Article 15 or the willful and intentional violation of G.S. 20-52.1, 20-75, 20-79, 20-82, 20-108, 20-109 or rescission and cancellation of dealer's license and dealer's plates under G.S. 20-110(e) or 20-110(f) or any lawful rule or regulation promulgated by the Division under this Article.

(9) Conviction of an offense set forth under G.S. 20-106, 20-106.1, 20-107, 20-112 while holding such a license or within five years next preceding the date of filing the application; or conviction of a felony involving moral turpitude under the laws of this State, any other state, territory or the District of Columbia or of the United States. (1955, c. 1243, s. 10; 1963, c. 1102; 1967, c. 1126, s. 2; 1975, c. 716, s. 5; 1977, c. 560, s. 3; 1983, c. 704, s. 4; 1985, c. 687; ss. 1, 2.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. —

The 1985 amendment, effective July 11, 1985, inserted "or Article 15" in subdivision (2), and in subdivision (9) deleted a reference to § 20-105, inserted a reference to § 20-107, and substituted "under the laws of this State, any other state, territory or the District of Columbia, or of the United States" for "under the laws of this State or any other state, or territory, or the District of Columbia."

§ 20-300. Appeals from actions of Commissioner.

CASE NOTES

Review of a decision by the Commissioner of Motor Vehicles is governed by § 150A-51 (see now § 150B-51). GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

§ 20-301. Powers of Commissioner.

CASE NOTES

Power to Forestall Franchise Termination. — Neither this section nor § 20-305(6) expressly vests the Commissioner with the power to order parties to enter into a contract. However, the statutory prohibition on franchise termination except for cause remains intact. Thus it is not necessary that the Commissioner have the power to order parties to enter into contracts to enable the agency to function properly. GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

Commissioner's order finding that GMC failed to renew dealer's franchise agreements without cause and directing that the agreements not be terminated was proper. However, the Commissioner exceeded his authority in ordering GMC to enter "a regular five (5) year motor vehicle dealer sales agreement" with dealer. GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

Applied in American Motors Sales Corp. v. Peters, 311 N.C. 311, 317 S.E.2d 351 (1984).

§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

Legal Periodicals. —

For survey of 1982 law on commercial law, see 61 N.C.L. Rev. 1018 (1983).

For 1984 survey on commercial law, "Green Light to Territorial Security for Automobile Dealers," see 63 N.C.L. Rev. 1080 (1985).

CASE NOTES

Subdivision (5) is not, etc. —

While subdivision (5) of this section prohibiting additional franchises amounts to a restraint of trade, the restraint of intra-band trade contemplated by the statute is not such as to amount to the creation of a monopoly. More than a mere adverse effect on competition must arise before a restraint of trade becomes monopolistic. American Motors Sales Corp. v. Peters, 311 N.C. 311, 317 S.E.2d 351 (1984).

Good Cause for Failure to Renew Franchise. — To prove that poor sales performance constitutes good cause for its failure to renew respondent's franchise agreements, petitioner must demonstrate that: (1) respondent failed to comply with a provision of the franchise agreements which required satisfactory sales performance; (2) petitioner's performance standards are reasonable; and (3) respondent's failure was not due primarily to economic or market factors beyond his control. GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

Power to Forestall Franchise Termination. — Neither § 20-301 nor subdivision (6) of this section expressly vest the Commissioner with the power to order parties to enter into a contract. However, the statutory prohibition on franchise termination except for cause remains intact. Thus it is not necessary that the Commissioner have the power to order parties to enter into contracts to enable the agency to function properly. GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

Commissioner's order finding that GMC failed to renew dealer's franchise agreements without cause and directing that the agreements not be terminated was proper. However, the Commissioner exceeded his authority in ordering GMC to enter "a regular five (5) year motor vehicle dealer sales agreement" with dealer. GMC v. Kinlaw, 78 N.C. App. 521, 338 S.E.2d 114 (1985).

Filing of Petition with DMV. — The actual stamping of a petition mailed by dealer on Oct. 26, 1982, on Nov. 2, 1982 by the party responsible for processing petitions for the DMV did not constitute the required filing, but instead, the receipt of the petition by the DMV constituted its filing. Star Auto. Co. v. Saab-Scania of Am., Inc., — N.C. App. —, 353 S.E.2d 260 (1987).

§ 20-305.2. Unfair methods of competition.

CASE NOTES

Cited in American Motors Sales Corp. v. Peters, 311 N.C. 311, 317 S.E.2d 351 (1984).

Article 13.

The Vehicle Financial Responsibility Act of 1957.

§ 20-309. Financial responsibility prerequisite to registration; must be maintained throughout registration period.

(a) No self-propelled motor vehicle shall be registered in this State unless the owner at the time of registration has financial responsibility for the operation of such motor vehicle, as provided in this Article. The owner of each motor vehicle registered in this State shall maintain financial responsibility continuously throughout the period of registration.

(b) Financial responsibility shall be a liability insurance policy or a financial security bond or a financial security deposit or by qualification as a self-insurer, as these terms are defined and described in Article 9A, Chapter 20 of the General Statutes of North Carolina, as amended.

(c) When it is certified that financial responsibility is a liability insurance policy, the Commissioner of Motor Vehicles may require that the owner produce records to prove the fact of such insurance, and failure to produce such records shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned. It shall be the duty of insurance companies, upon request of the Division, to verify the accuracy of any owner's certification.

(d) When liability insurance with regard to any motor vehicle is terminated by cancellation or failure to renew, or the owner's financial responsibility for the operation of any motor vehicle is otherwise terminated, the owner shall forthwith surrender the registration certificate and plates of the vehicle to the Division of Motor Vehicles unless financial responsibility is maintained in some other manner in compliance with this Article.

(e) Upon termination by cancellation or otherwise of an insurance policy provided in subsection (b) of this section, the insurer shall notify the Division of such termination. The Division, upon receiving notice of cancellation or termination of an owner's financial responsibility as required by this Article, shall notify such owner of such cancellation or termination, and such owner shall, to

retain the registration plate for the vehicle registered or required to be registered, within 10 days from date of notice given by the Division either:

(1) Certify to the Division that he had financial responsibility effective on or prior to the date of such termination; or

(2) In the case of a lapse in financial responsibility, pay a fifty dollar ($50.00) civil penalty; and certify to the Division that he now has financial responsibility effective on the date of certification, that he did not operate the vehicle in question during the period of no financial responsibility with the knowledge that there was no financial responsibility, and that the vehicle in question was not involved in a motor vehicle accident during the period of no financial responsibility.

Failure of the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and unless the owner's registration plate has on or prior to the date of termination of insurance been surrendered to the Division by surrender to an agent or representative of the Division designated by the Commissioner, or depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division shall revoke the vehicle's registration for 30 days.

In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, spouse, or any child of the spouse, or any child of such owner within less than 30 days after the date of receipt of the registration plate by the Division of Motor Vehicles, except that a spouse living separate and apart from the registered owner may register such vehicle immediately in such spouse's name. Additionally, as a condition precedent to the reregistration of the vehicle by the registered owner, spouse, or any child of the spouse, or any child of such owner, except a spouse living separate and apart from the registered owner, the payment of a restoration fee of fifty dollars ($50.00) and the appropriate fee for a new registration plate is required. Any person, firm or corporation failing to give notice of termination shall be subject to a civil penalty of two hundred dollars ($200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division.

(f) The Commissioner shall administer and enforce the provisions of this Article and may make rules and regulations necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the Commissioner under the provisions of this Article. (1957, c. 1393, s. 1; 1959, c. 1277, s. 1; 1963, c. 964, s. 1; 1965, c. 272; c. 1136, ss. 1, 2; 1967, c. 822, ss. 1, 2; c. 857, ss. 1, 2; 1971, c. 477, ss. 1, 2; c. 924; 1975, c. 302; c. 348, ss. 1-3; c. 716, s. 5; 1979, 2nd Sess., c. 1279, s. 1; 1981, c. 690, s. 25; 1983, c. 761, s. 146; 1983 (Reg. Sess., 1984), c. 1069, ss. 1, 2; 1985, c. 666, s. 84.)

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1069, s. 2, amends ss. 146 and 147 of Session Laws 1983, c. 761, which amended this section and § 20-311, by changing the effective date of c. 761

from August 1, 1984, to September 15, 1984.

Effect of Amendments. —

The 1983 (Reg. Sess., 1984) amendment, effective July 2, 1984, amended Session Laws 1983, c. 761, s. 146 by rewriting the third paragraph of subsection (e). For the effective date of Session Laws 1983, c. 761, see the Editor's note above.

The 1985 amendment, effective October 1, 1985, deleted "within 15 days from date of the notice given by the Division, in order" preceding "to retain the registration plate," and substituted the language "within 10 days from date of notice given by the Division either:" along with subdivisions (1) and (2) for "certify to the Division that he has financial responsibility effective on or prior to the date of such termination" at the end of the first paragraph of subsection (e).

Legal Periodicals. —

For 1984 survey, "Employee Exclusion Clauses in Automobile Liability Insurance Policies," see 63 N.C.L. Rev. 1228 (1985).

CASE NOTES

Applied in Harris v. Scotland Neck Rescue Squad, Inc., 75 N.C. App. 444, 331 S.E.2d 695 (1985).

Stated in Smith v. Nationwide Mut. Ins. Co., 315 N.C. 262, 337 S.E.2d 569 (1985).

Cited in Lowe v. Tarble, 312 N.C. 467, 323 S.E.2d 19 (1984).

§ 20-310. Grounds and procedure for cancellation or nonrenewal of a motor vehicle liability insurance policy; review by Commissioner of Insurance.

(f) No cancellation or refusal to renew by an insurer of a policy of automobile insurance shall be effective unless the insurer shall have given the policyholder notice at his last known post-office address by certificate of mailing a written notice of the cancellation or refusal to renew. Such notice shall:

(1) Be approved as to form by the Commissioner of Insurance prior to use;

(2) State the date, not less than 60 days after mailing to the insured of notice of cancellation or notice of intention not to renew, on which such cancellation or refusal to renew shall become effective, except that such effective date may be 15 days from the date of mailing or delivery when it is being canceled or not renewed for the reasons set forth in subdivision (1) of subsection (d) and in subdivision (4) of subsection (e) of this section;

(3) State the specific reason or reasons of the insurer for cancellation or refusal to renew;

(4) Advise the insured of his right to request in writing, within 10 days of the receipt of the notice, that the Commissioner of Insurance review the action of the insurer; and the insured's right to request in writing, within 10 days of receipt of the notice, a hearing before the Commissioner of Insurance;

(5) Either in the notice or in an accompanying statement advise the insured that operation of a motor vehicle without complying with the provisions of this Article is a misdemeanor and specifying the penalties for such violation.

(g) Nothing in this section shall apply:

(1) If the insurer has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has manifested such intention by any other means, including the mailing by first-class mail of a premium notice or expiration notice, and the insured has failed to pay the required premium prior to the premium due date;

(2) If the named insured has notified in writing the insurer or its agent that he wishes the policy to be canceled or that he does not wish the policy to be renewed;

(3) To any policy of automobile insurance which has been in effect less than 60 days, unless it is a renewal policy, or to any policy which has been written or written and renewed for a consecutive period of 48 months or longer.

(i) Notwithstanding any provision herein contained, any insured may within 10 days of the receipt of the notice of cancellation or notice of intention not to renew, or the receipt of the reason or reasons for cancellation or refusal to renew if they were not stated in the notice, be entitled to request in writing that the Commissioner of Insurance review the action of an insurer in canceling or refusing to renew the policy of such insured. Within said 10-day period the insured may also request in writing a hearing in regard to such review; otherwise, the right of the insured for a hearing shall be deemed waived. On receiving a request in writing for a review of the action of such insurer, the Commissioner of Insurance shall immediately notify the insurer involved of the insured's request and the charges involved, if known, and on receipt of said notification and within 10 days thereafter the insurer may make a request in writing for a hearing in regard to such review; otherwise, the right of the insurer to such a hearing shall be deemed waived. If neither the insurer or the insured by request in writing or the Commissioner of Insurance of his own motion requires a hearing, then in such event the Commissioner of Insurance shall make such investigation as he deems appropriate to determine if the insurer has violated the provisions of this section, and shall after appropriate findings of fact either approve the cancellation or nonrenewal of such policy or order the insurer to renew, reissue, or reinstate such policy on such terms as may be just. At the written request of the insured or insurer or on his own motion, the Commissioner of Insurance shall after notice conduct a hearing to determine if the insurer has violated the provisions of this section, and after appropriate findings of fact, shall within 40 days after receipt in writing of a request for review by the insured, either approve the cancellation or nonrenewal of such policy or order the insurer to renew, reissue, or reinstate such policy on such terms as may be just. In addition, if the Commissioner of Insurance finds after notice and hearing and after appropriate findings of fact, that the insurer has willfully violated the provisions of this section or has acted without reasonable investigation into the grounds for action of cancellation or nonrenewal, he may order the insurer involved to pay the reasonable expenses and costs of the investigation and hearing conducted by the Commissioner not to exceed the sum of three hundred dollars ($300.00) and such costs as are ordered paid by the Commissioner pursuant to the provisions of this section shall be paid as a condition of such insurer continuing to write automobile insurance business in this State. Any insured or insurer aggrieved by any order or

decision of the Commissioner of Insurance may appeal said order and decision to the Superior Court of Wake County pursuant to and subject to the provisions of G.S. 58-9.3. All examinations, investigations, and hearings provided by this subsection may be conducted by the Commissioner personally or by one or more of his deputies, actuaries, examiners, licensed attorneys, or employees designated by him for the purpose, and any order entered by such hearing officer other than the Commissioner shall have the same force and effect as if entered by the Commissioner himself. All hearings shall be held at such time and place as shall be designated in a notice which shall be given by the Commissioner in writing to the person cited to appear at least 10 days before the date designated thereon. The notice shall state the subject of the inquiry and the specific charges, if any. It shall be sufficient to give such notice either by delivering it or by depositing the same in the United States mail postage prepaid and addressed to the last known address of such insured or insurer. The policy shall remain in full force and effect during the pendency of review by the Commissioner of Insurance or the court except where the Commissioner of Insurance has sustained the action of the insurer and except where the cancellation or failure to renew was for nonpayment under subdivision (1) of subsection (d) and subdivision (4) of subsection (e) of this section, in which case the policy shall terminate as of the date provided in the notice under subsection (f) of this section.

(1957, c. 1393, s. 2; 1963, c. 842, ss. 1-3; c. 964, s. 2; 1965, c. 1135; 1967, c. 857, s. 3; 1971, c. 1205, s. 4; 1985, c. 666, s. 67; 1987, c. 864, s. 25.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendments, it is not set out.

Effect of Amendments. — The 1985 amendment, effective July 10, 1985, deleted "of his possible eligibility for insurance through the North Carolina Automobile Insurance Plan; and" following "Either in the notice or in an accompanying statement advised the insured" at the beginning of subdivision (f)(5), inserted "including the mailing by first-class mail of a premium notice or expiration notice, and the insured has failed to pay the required premium prior to the premium due date" at the end of subdivision (g)(1), and added "and any order entered by such hearing officer other than the Commissioner shall have the same force and effect as if entered by the Commissioner himself" at the end of the eighth sentence of subsection (i).

The 1987 amendment, effective August 14, 1987, inserted "licensed attorneys" near the middle of the eighth sentence of subsection (i).

CASE NOTES

As to the interrelationship between subdivision (d)(1) and subsection (f) of this section, see Peerless Ins. Co. v. Freeman, 78 N.C. App. 774, 338 S.E.2d 570, aff'd, 317 N.C. 145, 343 S.E.2d 539 (1986).

Termination Before End of Policy Period Governed by Section. — An insurer may terminate automobile liability coverage before the end of a policy period only for the reasons stated in and in compliance with the procedural requirements of this section. Peerless Ins. Co. v. Freeman, 78 N.C. App. 774, 338 S.E.2d 570, aff'd, 317 N.C. 145, 343 S.E.2d 539 (1986).

Nonrenewal for Nonpayment of Premiums. — Provisions of this section were not intended to apply to the situation in which the policy is simply not renewed for nonpayment of premiums, where the insurer's "Premium Notice" puts the insured on notice of the need to renew and affords him an opportunity to do so. Smith v. Nationwide Mut. Ins. Co., 315 N.C. 262, 337 S.E.2d 569 (1985).

Where insurer's "Premium Notice" constituted a manifestation of its will-

ingness to renew insured's policy, subdivision (g)(1) of this section was invoked and the requirements of subsection (f) did not apply. Smith v. Nationwide Mut. Ins. Co., 315 N.C. 262, 337 S.E.2d 569 (1985).

Repeal by Implication of Notice Requirement. — While the legislature effectively abolished the North Carolina Automobile Insurance Plan with passage of the Reinsurance Facility Act (§ 58-248.26 et seq.), notification of the Plan under subdivision (f)(5) of this section was not specifically repealed until 1985, by Sess. L. 1985, c. 666, s. 67. However, since the legislature repealed the former Plan system, subdivision (f)(5) of this section was also thereby repealed by implication, to the extent that it required notification of the defunct Plan. Coleman v. Interstate Cas. Ins. Co., — N.C. App. —, 352 S.E.2d 249 (1987).

As the Reinsurance Facility Act (§ 58-248.26 et seq.) operated to repeal by implication that portion of subdivision (f)(5) of this section requiring notice of the defunct North Carolina Automobile Insurance Plan, cancellation notice which did not advise insured of the Plan was nevertheless valid. Colemen v. Interstate Cas. Ins. Co., — N.C. App. —, 352 S.E.2d 249 (1987).

Failure to Comply with Section. — Where the insured had accepted the insurance company's offer to renew when insured sent and insurer accepted partial payment in August, the insurer's attempted cancellation two months after renewal could only be deemed an act of the insurer, thereby invoking this section; and where insurer did not fulfill its obligations in conformity with this section, it did not effectively cancel insured's liability policy prior to the accident in question. Peerless Ins. Co. v. Freeman, 78 N.C. App. 774, 338 S.E.2d 570, aff'd, 317 N.C. 145, 343 S.E.2d 539 (1986).

Cited in Allstate Ins. Co. v. Nationwide Ins. Co., 82 N.C. App. 366, 346 S.E.2d 310 (1986).

§ 20-311. Revocation of registration when financial responsibility not in effect.

Upon receipt of evidence that financial responsibility for the operation of any motor vehicle registered or required to be registered in this State is not or was not in effect at the time of operation or certification that insurance was in effect, the Division shall revoke the owner's registration plate issued for the vehicle at the time of operation or certification that insurance was in effect or the current registration plate for the vehicle in the year registration has changed for 30 days.

The vehicle for which registration has been revoked pursuant to this section may be registered at the end of the 30-day revocation period upon certification of financial responsibility and payment by the vehicle owner of a fifty-dollar ($50.00) administrative fee in addition to appropriate license fees. In no event may such vehicle be registered prior to payment of the fifty dollar ($50.00) administrative fee. (1957, c. 1393, s. 3; 1959, c. 1277, s. 2; 1963, c. 964, s. 4; 1965, c. 205; c. 1136, s. 3; 1967, c. 822, s. 3; c. 857, s. 4; 1971, c. 477, s. 3; 1975, c. 348, s. 4; c. 716, s. 5; 1979, 2nd Sess., c. 1279, s. 2; 1983, c. 761, s. 147; 1983 (Reg. Sess., 1984), c. 1069, s. 2.)

Editor's Note. —

Session Laws 1983 (Reg. Sess., 1984), c. 1069, s. 2, amends ss. 146 and 147 of Session Laws 1983, c. 761, which amended § 20-309 and this section, by changing the effective date of c. 761 from August 1, 1984, to September 15, 1984.

§ 20-313. Operation of motor vehicle without financial responsibility a misdemeanor.

CASE NOTES

Cited in State v. Scott, 71 N.C. App. 570, 322 S.E.2d 613 (1984).

Article 14.

Driver Training School Licensing Law.

§ 20-321. Enforcement of Article by Commissioner.

(a) The Commissioner shall adopt and prescribe such regulations concerning the administration and enforcement of this Article as are necessary to protect the public. The Commissioner or his authorized representative shall have the duty of examining applicants for commercial driver training schools and instructor's licenses, licensing successful applicants, and inspecting school facilities, records, and equipment.

(1965, c. 873; 1973, c. 1331, s. 3; 1987, c. 69; c. 827, § 3.)

Only Part of Section Set Out. — As the rest of the section was not affected by the amendment, it is not set out.

Effect of Amendments. — Session Laws 1987, c. 69, effective April 10, 1987, in the second sentence of subsection (a) substituted "commercial driver training schools" for "commercial driver training school" and substituted "inspecting school facilities, records, and equipment" for "inspecting school facilities and equipment."

Session Laws 1987, c. 827, s. 3, effective August 13, 1987, deleted "subject to the provisions of Chapter 150A of the General Statutes of North Carolina" following "shall" in the first sentence of subsection (a).

Article 15.

Vehicle Mileage Act.

§ 20-343. Unlawful change of mileage.

CASE NOTES

Odometer alteration prohibited by this section is a violation of motor vehicle laws of North Carolina as that term is used in § 20-28.1(c). Evans v. Roberson, 314 N.C. 315, 333 S.E.2d 228 (1985).

§ 20-346. Lawful service, repair, or replacement of odometer.

CASE NOTES

Cited in McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

§ 20-347. Disclosure requirements.

CASE NOTES

In order to establish liability under this section and § 20-348, the plaintiff must show (1) that the seller had either actual or constructive knowledge that the odometer was materially incorrect, and (2) that the seller acted with gross negligence or recklessness. McCraken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

Intent to Defraud Found Where Dealer Had Reason to Question Odometer Mileage. — The dealer acted with the intent to defraud, where the evidence showed that the dealer had some question as to the verity of the odometer mileage, yet all it did to confirm the mileage was to drive the vehicle, examine the interior and compare the mileage on the inspection sticker with the mileage on the odometer, and the evidence also showed that any mechanic could ascertain from the grease buildup on the chassis that the vehicle had been driven more than the number of miles shown on the odometer, that several pieces of equipment, most noticeably the tires, were not of the original brand, and that the truck showed other signs of wear. To allow a dealer with expertise to ignore such indicators of wear would be to eviscerate the purpose of the statute. Levine v. Parks Chevrolet, Inc., 76 N.C. App. 44, 331 S.E.2d 747, cert. denied, 315 N.C. 184, 337 S.E.2d 858 (1985).

Stated in United States v. Cotoia, 785 F.2d 497 (4th Cir. 1986).

§ 20-348. Private civil action.

CASE NOTES

In order to establish liability under § 20-347 and this section the plaintiff must show (1) that the seller had either actual or constructive knowledge that the odometer was materially incorrect, and (2) that the seller acted with gross negligence or recklessness. McCraken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

To make out a prima facie case under subsection (a) of this section, a plaintiff must establish (1) a violation of a requirement imposed under this article, (2) that was made with the intent to defraud. McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

Constructive knowledge that the odometer is incorrect is established upon proof that the transferor either (a) recklessly disregarded indications that it was incorrect, or (b) in the exercise of reasonable care, should have known the odometer was incorrect. McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

Intent to Defraud Essential, etc. — Although knowledge of an incorrect odometer reading may, in some cases, be evidence of gross negligence or recklessness, a mere negligent violation of a disclosure requirement or even a knowing violation cannot support a private cause of action under subsection (a) of this section, absent evidence sufficient to demonstrate an intent to defraud. McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

Evidence Held Insufficient. — Under the evidence, there was no more than a suspicion that defendant was grossly negligent or recklessly disregarded any indications that truck had been driven more than 19,000 miles in 14 months, and judgment under subsection (a) of this section would be reversed. McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

Applied in Levine v. Parks Chevrolet, Inc., 76 N.C. App. 44, 331 S.E.2d 747 (1985).

§ 20-349. Injunctive enforcement.

CASE NOTES

Intent to Defraud Not Required. — Intent to defraud the plaintiff is not required in an action for injunctive relief against a violator under this section, or to impose misdemeanor criminal penalties under § 20-350, although both of these statutes require proof of knowledge by the transferor. McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

§ 20-350. Criminal offense.

CASE NOTES

Intent to Defraud Not Required. — Intent to defraud the plaintiff is not required in an action for injunctive relief against a violator under § 20-349, or to impose misdemeanor criminal penalties under this section, although both of these statutes require proof of knowledge by the transferor. McCracken v. Anderson Chevrolet-Olds, Inc., 82 N.C. App. 521, 346 S.E.2d 683 (1986).

Stated in Evans v. Roberson, 69 N.C. App. 644, 317 S.E.2d 715 (1984).

Article 15A.

New Motor Vehicles Warranties Act.

§ 20-351. Purpose.

This Article shall provide State and private remedies against motor vehicle manufacturers for persons injured by new motor vehicles failing to conform to express warranties. (1987, c. 385, s. 1.)

Editor's Note. — Session Laws 1987, c. 385, s. 2 makes this Article effective October 1, 1987.

§ 20-351.1. Definitions.

As used in this Article:

(1) "Consumer" means the purchaser, other than for purposes of resale, or lessee from a commercial lender, lessor, or from a manufacturer or dealer, of a motor vehicle, and any other person entitled by the terms of an express warranty to enforce the obligations of that warranty.

(2) "Manufacturer" means any person or corporation, resident or nonresident, who manufacturers or assembles or imports or distributes new motor vehicles which are sold in the State of North Carolina.

(3) "Motor vehicle" includes a motor vehicle as defined in G.S. 20-4.01 which is sold in this State, but does not include "house trailer" as defined in G.S. 20-4.01 or any motor vehicle with a gross vehicle weight of 10,000 pounds or more. (1987, c. 385, s. 1.)

§ 20-351.2. Require repairs.

Express warranties for a new motor vehicle shall remain in effect at least one year or 12,000 miles. If a new motor vehicle does not conform to all applicable express warranties for a period of one year, or the term of the express warranties, whichever is greater, following the date of original delivery of the motor vehicle to the consumer, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during such period, the manufacturer shall make, or arrange to have made, repairs necessary to conform the vehicle to the express warranties, whether or not these repairs are made after the expiration of the applicable warranty period. (1987, c. 385, s. 1.)

§ 20-351.3. Replacement or refund.

If the manufacturer is unable, after a reasonable number of attempts, to conform the motor vehicle to any express warranty by repairing or correcting, or arranging for the repair or correction of, any defect or condition or series of defects or conditions which substantially impair the value of the motor vehicle to the consumer, and which occurred no later than 24 months or 24,000 miles following original delivery of the vehicle, the manufacturer shall, at the option of the consumer, replace the vehicle with a comparable new motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the following:

(1) The full contract price including, but not limited to, charges for undercoating, dealer preparation and transportation, and installed options, plus the non-refundable portions of extended warranties and service contracts;

(2) All collateral charges, including but not limited to, sales tax, license and registration fees, and similar government charges;

(3) All finance charges incurred by the consumer after he first reports the nonconformity to the manufacturer, its agent, or its authorized dealer; and

(4) Any incidental damages and monetary consequential damages, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and any lienholders as their interests may appear. A reasonable allowance for use is that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, its agent, or its authorized dealer, and during any subsequent period when the vehicle is not out of service because of repair. "Reasonable allowance" is presumed to be the cash price of the vehicle multiplied by a fraction having as its denominator 100,000 miles and its numerator the number of miles on the vehicle attributed to the consumer. (1987, c. 385, s. 1.)

§ 20-351.4. Affirmative defenses.

It is an affirmative defense to any claim under this Article that an alleged nonconformity or series of nonconformities are the result of abuse, neglect, odometer tampering by the consumer or unauthorized modifications or alterations of a motor vehicle. (1987, c. 385, s. 1.)

§ 20-351.5. Presumption.

(a) It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties if:

(1) The same nonconformity has been presented for repair to the manufacturer, its agent, or its authorized dealer four or more times but the same nonconformity continues to exist; or

(2) The vehicle was out of service to the consumer during or while awaiting repair of the nonconformity or a series of nonconformities for a cumulative total of 20 or more business days during any 12-month period of the warranty,

provided that the consumer has notified the manufacturer directly in writing of the existence of the nonconformity or series of nonconformities and allowed the manufacturer a reasonable period, not to exceed 15 calendar days, in which to correct the nonconformity or series of nonconformities. The manufacturer must clearly and conspicuously disclose to the consumer in the warranty or owners manual that written notification of a nonconformity is required before a consumer may be eligible for a refund or replacement of the vehicle and the manufacturer shall include in the warranty or owners manual the name and address where the written notification may be sent. Provided, further, that notice to the manufacturer shall not be required if the manufacturer fails to make the disclosures provided herein.

(b) The consumer may prove that a defect or condition substantially impairs the value of the motor vehicle to the consumer in a manner other than that set forth in subsection (a) of this section.

(c) The term of an express warranty, the one-year period, and the 20-day period shall be extended by any period of time during which repair services are not available to the consumer because of war, strike, or natural disaster. (1987, c. 385, s. 1.)

§ 20-351.6. Civil action by the Attorney General.

Whenever, in his opinion, the interests of the public require it, it shall be the duty of the Attorney General upon his ascertaining that any of the provisions of this Article have been violated by the manufacturer to bring a civil action in the name of the State, or any officer or department thereof as provided by law, or in the name of the State on relation of the Attorney General. (1987, c. 385, s. 1.)

§ 20-351.7. Civil action by the consumer.

A consumer injured by reason of any violation of the provisions of this Article may bring a civil action against the manufacturer; provided, however, the consumer has given the manufacturer written notice of his intent to bring an action against the manufacturer at least 10 days prior to filing such suit. Nothing in this section shall prevent a manufacturer from requiring a consumer to utilize an informal settlement procedure prior to litigation if that procedure substantially complies in design and operation with the Magnuson-Moss Warranty Act, 15 USC § 2301 et seq., and regulations promulgated thereunder, and that requirement is written clearly and conspicuously, in the written warranty and any warranty instructions provided to the consumer. (1987, c. 385, s. 1.)

§ 20-351.8. Remedies.

In any action brought under this Article, the court may grant as relief:

(1) A permanent or temporary injunction or other equitable relief as the court deems just;

(2) Monetary damages to the injured consumer in the amount fixed by the verdict. Such damages shall be trebled upon a finding that the manufacturer unreasonably refused to comply with G.S. 20-351.2 or G.S. 20-351.3. The jury may consider as damages all items listed for refund under G.S. 20-351.3;

(3) A reasonable attorney's fee for the attorney of the prevailing party, payable by the losing party, upon a finding by the court that:

a. The manufacturer unreasonably failed or refused to fully resolve the matter which constitutes the basis of such action; or

b. The party instituting the action knew, or should have known, the action was frivolous and malicious. (1987, c. 385, s. 1.)

§ 20-351.9. Dealership liability.

No authorized dealer shall be held liable by the manufacturer for any refunds or vehicle replacements in the absence of evidence indicating that dealership repairs have been carried out in a manner substantially inconsistent with the manufacturers' instructions. This Article does not create any cause of action by a consumer against an authorized dealer. (1987, c. 385, s. 1.)

§ 20-351.10. Preservation of other remedies.

This Article does not limit the rights or remedies which are otherwise available to a consumer under any other law. (1987, c. 385, s. 1.)

Article 16.

Professional Housemoving.

§ 20-359.1. Insurance requirements.

OPINIONS OF ATTORNEY GENERAL

Liability for the movement of any building or structure by automobile or mobile equipment can not be excluded from the insurance coverage required to be furnished for licensure by a professional house mover pursuant to this section. See opinion of Attorney General to Mr. W.F. Rosser, P.E., Head of Maintenance, North Carolina Department of Transportation, 52 N.C.A.G. 105 (1983).

§§ 20-373 to 20-375: Reserved for future codification purposes.

Article 17.

Motor Carrier Safety Regulation Unit.

Part 1. General Provisions.

§ 20-376. Definitions.

As used in this Article,

(1) "Certificate" means a certificate of public convenience and necessity issued by the North Carolina Utilities Commission pursuant to the provisions of Chapter 62 to a common carrier by motor vehicle.

(2) "Certificate of Exemption" means a certificate issued by the Division authorizing transportation services which are exempt from economic regulations under the Public Utilities Act.

(3) "Charter party", with regard to motor carriers, means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with the carrier's tariff, lawfully on file with the North Carolina Utilities Commission, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group from a point of origin to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after having left the place of origin.

(4) "Common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property or any class or classes thereof for compensation, whether over regular or irregular routes, except as exempted in G.S. 62-260.

(5) "Contract carrier by motor vehicle" means any person which, under an individual contract or agreement with another person and with such additional persons as may be approved by the North Carolina Utilities Commission, en-

gages in the transportation other than the transportation referred to in subdivision (4) of this section, by motor vehicle of persons or property in intrastate commerce for compensation, except as exempted in G.S. 62-260.

(6) "Division" means the North Carolina Division of Motor Vehicles.

(7) "Exempt carrier" means any person providing transportation by motor vehicle for compensation which is declared to be exempt from economic regulation by the North Carolina Utilities Commission or the Interstate Commerce Commission.

(8) "For-hire carrier" means any person engaged in the transportation of persons or property by motor vehicle for compensation.

(9) "Foreign commerce" means commerce between any place in the United States and any place in a foreign country, or between places in the United States through any foreign country.

(10) "Franchise" means the grant of authority by the North Carolina Utilities Commission to any person to engage in business as a common carrier or contract carrier, whether or not exclusive or shared with others or restricted as to terms and conditions and whether described by area or territory or not, and includes certificates and permits, and all other forms of licenses or orders and decisions granting such authority.

(11) "Highway" means any road or street in this State used by the public or dedicated or appropriated to public use; and public vehicular area as defined in G.S. 20-4.01(32).

(12) "Industrial plant" means any plant, mill, or factory engaged in the business of manufacturing.

(13) "Interstate commerce" means commerce between any place in a state and any place in another state or between places in the same state through another state.

(14) "Intrastate commerce" means commerce between points and over a route or within a territory wholly within this State, which commerce is not a part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce, and includes all transportation within this State for compensation in interstate or foreign commerce which has been exempted by Congress from federal regulation.

(15) "Intrastate operations" means the transportation of persons or property for compensation in intrastate commerce.

(16) "Motor carrier" means both a for-hire carrier by motor vehicle and a private carrier by motor vehicle.

(17) "Motor vehicle" means any vehicle, machine, tractor, semitrailer, or any combination thereof, which is propelled or drawn by mechanical power and used upon the highways within the State.

(18) "Municipality" means any incorporated community, whether designated in its charter as a city, town or village.

(19) "Permit" means a permit issued by the North Carolina Utilities Commission pursuant to the provisions of Chapter 62 to a contract carrier by motor vehicle.

(20) "Person" means a corporation, individual, copartnership, company, association, or any combination of individuals or organizations doing business as a unit, and includes any trustee, receiver, assignee, lessee, or personal representative thereof.

(21) "Private carrier" means any person not included in the definitions of common carrier or contract carrier, which transports in intrastate commerce in its own vehicle or vehicles property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent or bailment, or when such transportation is purely an incidental adjunct to some other established private business owned and operated by such person other than the transportation of property for compensation.

(22) "Town" means any unincorporated community or collection of people having a geographical name by which it may be generally known and is so generally designated. (1985, c. 454, s. 1.)

Editor's Note. — Session Laws 1985, c. 454, s. 20 makes this Article effective on ratification. The act was ratified June 24, 1985.

Part 2. Authority and Powers of Division.

§ 20-377. General powers of Division.

The Division shall have and exercise such general power and authority to supervise and control the motor carriers of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties. (1985, c. 454, s. 1.)

§ 20-378. Power to make and enforce rules and regulations for motor carriers.

The Division shall have and exercise full power and authority to administer and enforce the provisions of this Article, and to make and enforce necessary rules and regulations to that end. (1985, c. 454, s. 1.)

§ 20-379. To investigate motor carriers under its control; visitation and inspection.

(a) The Division shall from time to time visit the places of business and investigate the books and papers of all motor carriers to ascertain if all the orders, rules and regulations of the North Carolina Utilities Commission and the Division have been complied with, and shall have full power and authority to examine all officers, agents and employees of such motor carriers, and all other persons, under oath or otherwise, and to compel the production of papers and the attendance of witnesses to obtain the information necessary for carrying into effect and otherwise enforcing the provisions of this Article and Chapter 62 of the General Statutes.

(b) Officers of the Division may during all reasonable hours enter upon any premises occupied by any motor carrier for the purpose of

making the examinations and tests and exercising any power provided for in this Article and in Chapter 62 of the General Statutes, and may set up and use on such premises any apparatus and appliances necessary therefor. Such motor carrier shall have the right to be represented at the making of such examinations, tests and inspections. (1985, c. 454, s. 1.)

§ 20-380. To investigate accidents involving motor carriers; to promote general safety program.

The Division may conduct a program of accident prevention and public safety covering all motor carriers with special emphasis on highway safety and transport safety and may investigate the causes of any accident on a highway involving a motor carrier. Any information obtained upon such investigation shall be reduced to writing and a report thereof filed in the office of the Division, which shall be subject to public inspection but such report shall not be admissible in evidence in any civil or criminal proceeding arising from such accident. The Division may adopt rules and regulations for the safety of the public as affected by motor carriers and the safety of motor carrier employees. The Division shall cooperate with and coordinate its activities for motor carriers with other programs of the North Carolina Utilities Commission, the North Carolina Insurance Department, the North Carolina Industrial Commission and other organizations engaged in the promotion of highway safety and employee safety. (1985, c. 454, s. 1.)

§ 20-381. Additional powers and duties of Division applicable to motor vehicles.

The Division is hereby vested with the following powers and duties:

(1) To prescribe qualifications and maximum hours of service of drivers and their helpers, and rules regulating safety of operation and equipment; and in the interest of uniformity of intrastate and interstate rules and regulations applicable within the State with respect to maximum hours of service of vehicle drivers and their helpers, and safety of operation and equipment, the Division may adopt and enforce the rules and regulations adopted and promulgated by the United States Department of Transportation with respect thereto, insofar as it finds the same to be practical and advantageous for application in this State and not in conflict with this Article. In order to promote safety of operation of motor carriers, the Division may avail itself of the assistance of any other agency of the State having special knowledge of such matters and it may make such investigations and tests as may be deemed necessary to promote safety of equipment and operation of vehicles upon the highways.

(2) The Division and its duly authorized inspectors and agents shall have authority at any time to enter upon the premises of any motor carrier, subject to the provisions of this Article, for the purpose of inspecting any motor vehicle and

equipment used by such motor carriers in the transportation of passengers and property, and to prohibit the use by any motor carrier of any motor vehicle or parts thereof or equipment thereon adjudged by such agents and inspectors to be unsafe for use in the transportation of passengers and property upon the public highways of this State; and when such agents or inspectors shall discover any motor vehicle of such motor carrier in actual use upon the highways in the transportation of passengers and property to be unsafe or any parts thereof or any equipment thereon to be unsafe, such agents or inspectors may, if they are of the opinion that further use of such vehicle, parts or equipment are imminently dangerous, stop such vehicle and require the operator thereof to discontinue its use and to substitute therefor a safe vehicle, parts or equipment at the earliest possible time and place, having regard for both the convenience and the safety of the passengers and property. When an inspector or agent stops a motor vehicle on the highway, under authority of this section, and the motor vehicle is in operative condition and its further movement is not dangerous to the passengers and property and to the users of the highways, it shall be the duty of the inspector or agent to guide the vehicle to the nearest point of substitution or correction of the defect. Such agents or inspectors shall also have the right to stop any motor vehicle which is being used upon the public highways for the transportation of passengers and property by a motor carrier subject to the provisions of this Article and to eject therefrom any driver or operator who shall be operating or be in charge of such motor vehicle while under the influence of intoxicating liquors. It shall be the duty of all inspectors and agents of the Division to make a written report, upon a form prescribed by the Division, of inspections of all motor equipment and a copy of each such written report, disclosing defects in such equipment, shall be served promptly upon the motor carrier operating the same, either in person by the inspector or agent or by mail. Such agents and inspectors shall also make and serve a similar written report in cases where a motor vehicle is operated in violation of the laws of this State or of the orders, rules and regulations of the North Carolina Utilities Commission or Division.

(3) To relieve the highways of all undue burdens and safeguard traffic thereon by promulgating and enforcing reasonable rules, regulations and orders designed and calculated to minimize the dangers attending transportation on the highways of all commodities including explosives or highway flammable or combustible liquids, substances or gases. (1985, c. 454, s. 1.)

Editor's Note. — Session Laws 1981, c. 412, s. 4, and c. 747, s. 66, changed the term "intoxicating liquors" to "alcoholic beverages" throughout the General Statutes as then in effect. However, Session Laws 1985, c. 454, s. 1, used "intoxicating liquors" in enacting this section.

§ 20-382. Interstate carriers.

(a) This Article shall apply to persons and vehicles engaged in interstate commerce over the highways of this State, except insofar as the provisions of this Article may be inconsistent with, or shall contravene, the Constitution or laws of the United States, and the Division may, in its discretion, require such carriers to file with it copies of their respective interstate authority or register their exempt operation and registration of their vehicles operated in the State, and to observe such reasonable rules and regulations as the Division may deem advisable in the administration of this Article and for the protection of persons and property upon the highways of the State.

(b) The Division or its authorized representative is authorized to confer with and to hold joint hearings with the authorities of other states or with the Interstate Commerce Commission or its representatives, or any other federal or State agency in connection with any matter arising under this Chapter, or under the Federal Motor Carrier Act, or under any other federal law which may directly or indirectly affect the interests of the people of this State or the policy declared by this Chapter or by the Interstate Commerce Act.

(c) Any person operating a for-hire motor vehicle in interstate commerce over the highways of this State without having properly registered with the Division its respective exempt operation or a copy of its interstate authority and each vehicle operated in this State shall be subject to a penalty of seventy-five dollars ($75.00), which shall be added to the registration fees provided in G.S. 20-385 and said penalty shall be collected with said registration fee from any carrier operating on the highways of North Carolina without registering his interstate authority by inspectors and officers of the Division in accordance with rules and regulations duly adopted by the Division before said vehicle shall be permitted to operate further upon the highways of North Carolina.

(d) No motor carrier, whether operating as a regulated carrier or exempt for-hire carrier, shall operate or cause to be operated in interstate commerce in this State any vehicle until he has filed evidence of required insurance with the Division and has been issued an identification stamp for such vehicle, which stamp must be attached to the approved uniform cab card and carried in the vehicle at all times. The identification stamp herein provided for shall be issued on an annual basis as of January 1st each year and shall be valid through February 1st the next succeeding year. When any person is discovered in this State, operating a vehicle in violation of this section, it shall be unlawful for anyone thereafter to operate said vehicle on the streets or highways of this State, except to remove it from the street or highway for purposes of parking or storing said vehicle until he shall pay to the Division a penalty of seventy-five dollars ($75.00). No court of the State shall entertain a suit of any kind brought for the purpose of preventing the collection of any penalty imposed in this section. Whenever a person shall have a valid defense to the enforcement of the collection of a penalty assessed or charged against him, such person shall pay such penalty to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have in the premises, and he may, at any time within 30 days after such payment, demand

the same in writing from the Commissioner of Motor Vehicles; and if same shall not be refunded within 90 days thereafter, may sue such official in the courts of the State for the amount so demanded. Such suit must be brought in the Superior Court of Wake County, or in the county in which the person paying the penalty resides. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of said vehicle without payment of the penalty prescribed herein. (1985, c. 454, s. 1.)

§ 20-383. Inspectors and officers given enforcement authority.

Only designated inspectors and officers of the Division shall have the authority to enforce the provisions of this Article and provisions of Chapter 62 applicable to motor transportation, and they are empowered to make complaint for the issue of appropriate warrants, informations, presentments or other lawful process for the enforcement and prosecution of violations of the transportation laws against all offenders, whether they be regulated motor carriers or not, and to appear in court or before the North Carolina Utilities Commission and offer evidence at the trial pursuant to such processes. (1985, c. 454, s. 1.)

§ 20-384. Safety regulations applicable to motor carrier and private carrier vehicles.

The Division of Motor Vehicles may promulgate highway safety rules and regulations for all for-hire motor carrier vehicles and all private carrier vehicles engaged in interstate commerce and intrastate commerce over the highways of North Carolina whether common carriers, contract carriers, exempt carriers, or private carriers. (1985, c. 454, s. 1; 1985 (Reg. Sess., 1986), c. 1018, s. 13.)

Editor's Note. — Session Laws 1985 (Reg. Sess., 1986), c. 1018, s. 22 provides that insofar as the provisions of the act are inconsistent with the provisions of any general or special laws or parts thereof, the provisions of the act shall be controlling.

Session Laws 1985 (Reg. Sess., 1986), c. 1018, s. 23 is a severability clause.

Effect of Amendments. — The 1985 (Reg. Sess., 1986) amendment, effective June 30, 1986, repealed an amendment to this section by Session Laws 1985, c. 757, s. 164(b). The amendment had been made effective July 1, 1986, and therefore never went into effect. The section is set out above as enacted by Session Laws 1985, c. 454, s. 1.

Part 3. Fees and Charges.

§ 20-385. Particular fees and charges fixed; payment.

The Divisions shall receive and collect the following fees and charges:

(1) One dollar ($1.00) for the registration with the Division of each motor vehicle to be put in operation by a motor carrier operating under the jurisdiction of the North Carolina

Utilities Commission, and a fee of one dollar ($1.00) for the annual reregistration of each such motor vehicle.

(2) Twenty-five dollars ($25.00) for the filing with the Division of the interstate motor carrier operating authority or registration of interstate exempt operation of every motor carrier operating into, from, within, or through North Carolina and filed with the Division under the provisions of G.S. 20-382 and five dollars ($5.00) for filing all subsequent amendments thereto to maintain said filing in a current status.

(3) One dollar ($1.00) for the registration with the Division of each motor vehicle operated into, from, within, or through North Carolina by interstate carriers and registered with the Division under the provisions of G.S. 20-382, and a fee of one dollar ($1.00) for the annual reregistration of each such motor vehicle.

(4) Twenty-five dollars ($25.00) for each Certificate of Exemption issued by the Division.

(5) Ten dollars ($10.00) for each emergency permit issued by the Division in accordance with G.S. 20-382. (1985, c. 454, s. 1.)

§ 20-386. Fees, charges and penalties; disposition.

All fees and charges received by the Division under G.S. 20-385 shall be in addition to any other tax or fee provided by law and shall be placed in the Highway Fund. (1985, c. 454, s. 1.)

Part 4. Penalties and Actions.

§ 20-387. Motor carrier violating any provision of Article, rules or orders; penalty.

Any motor carrier which violates any of the provisions of this Article or refuses to conform to or obey any rule, order or regulation of the Division shall, in addition to the other penalties prescribed in this Article forfeit and pay a sum up to one thousand dollars ($1,000) for each offense, to be recovered in an action to be instituted in the Superior Court of Wake County, in the name of the State of North Carolina on the relation of the Division; and each day such motor carrier continues to violate any provision of this Article or continues to refuse to obey or perform any rule, order or regulation prescribed by the Division shall be a separate offense. (1985, c. 454, s. 1.)

§ 20-388. Willful acts of employees deemed those of motor carrier.

The willful act of any officer, agent, or employee of a motor carrier, acting within the scope of his official duties of employment, shall, for the purpose of this Article, be deemed to be the willful act of the motor carrier. (1985, c. 454, s. 1.)

§ 20-389. Actions to recover penalties.

Except as otherwise provided in this Article, an action for the recovery of any penalty under this Article shall be instituted in Wake County, and shall be instituted in the name of the State of North Carolina on the relation of the Division against the person incurring such penalty; or whenever such action is upon the complaint of any injured person, it shall be instituted in the name of the State of North Carolina on the relation of the Division upon the complaint of such injured person against the person incurring such penalty. Such action may be instituted and prosecuted by the Attorney General, the District Attorney of the Wake County Superior Court, or the injured person. The procedure in such actions, the right of appeal and the rules regulating appeals shall be the same as provided by law in other civil actions. (1985, c. 454, s. 1.)

§ 20-390. Refusal to permit Division to inspect records made misdemeanor.

Any motor carrier, its officers or agents in charge thereof, that fails or refuses upon the written demand of the Division to permit its authorized representatives or employees to examine and inspect its books, records, accounts and documents, or its plant, property, or facilities, as provided for by law, shall be guilty of a misdemeanor. Each day of such failure or refusal shall constitute a separate offense and each such offense shall be punishable by a fine of not less than five hundred dollars ($500.00) and not more than five thousand dollars ($5,000). (1985, c. 454, s. 1.)

§ 20-391. Violating rules, with injury to others.

If any motor carrier doing business in this State by its agents or employees shall be guilty of the violations of the rules and regulations provided and prescribed by the Division, and if after due notice of such violation given to the principal officer thereof, if residing in the State, or, if not, to the manager or superintendent or secretary or treasurer if residing in the State, or, if not, then to any local agent thereof, ample and full recompense for the wrong or injury done thereby to any person as may be directed by the Division shall not be made within 30 days from the time of such notice, such motor carrier shall incur a penalty for each offense of five hundred dollars ($500.00). (1985, c. 454, s. 1.)

§ 20-392. Failure to make report; obstructing Division.

Every officer, agent or employee of any motor carrier, who shall willfully neglect or refuse to make and furnish any report required by the Division for the purposes of this Article, or who shall willfully or unlawfully hinder, delay or obstruct the Division in the discharge of the duties hereby imposed upon it, shall forfeit and pay five hundred dollars ($500.00) for each offense, to be recovered in an action in the name of the State. A delay of 10 days to make and furnish such report shall raise the presumption that the same was willful. (1985, c. 454, s. 1.)

§ 20-393. Disclosure of information by employee of Division unlawful.

It shall be unlawful for any agent or employee of the Division knowingly and willfully to divulge any fact or information which may come to his knowledge during the course of any examination or inspection made under authority of this Article, except to the Division or as may be directed by the Division or upon approval of a request to the Division by the Utilities Commission or by a court or judge thereof. (1985, c. 454, s. 1.)

§ 20-394. Remedies for injuries cumulative.

The remedies given by this Article to persons injured shall be regarded as cumulative to the remedies otherwise provided by law against motor carriers. (1985, c. 454, s. 1.)

§ 20-395. Willful injury to property of motor carrier a misdemeanor.

If any person shall willfully do or cause to be done any act or acts whatever whereby any building, construction or work of any motor carrier, or any engine, machine or structure of any matter or thing appertaining to the same shall be stopped, obstructed, impaired, weakened, injured or destroyed, he shall be guilty of a misdemeanor. (1985, c. 454, s. 1.)

§ 20-396. Unlawful motor carrier operations.

(a) Any person, whether carrier, shipper, consignee, or any officer, employee, agent, or representative thereof, who by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, shall knowingly and willfully seek to evade or defeat regulations as in this Article provided for motor carriers, shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not more than five hundred dollars ($500.00) for the first offense and not more than two thousand dollars ($2,000) for any subsequent offense.

(b) Any motor carrier, or other person, or any officer, agent, employee, or representative thereof, who shall willfully fail or refuse to make a report to the Division as required by this Article, or other applicable law, or to make specific and full, true, and correct answer to any question within 30 days from the time it is lawfully required by the Division so to do, or to keep accounts, records, and memoranda in the form and manner prescribed by the Division or shall knowingly and willfully falsify, destroy, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully neglect or fail to make true and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of the carrier, or person required under this Article to keep the same, or shall knowingly and willfully keep any accounts, records, or memoranda contrary to the rules, regulations, or orders of the Division with respect thereto, shall be deemed

guilty of a misdemeanor and upon conviction thereof be subject for each offense to a fine of not more than five thousand dollars ($5,000). As used in this subsection the words "kept" and "keep" shall be construed to mean made, prepared or compiled as well as retained. (1985, c. 454, s. 1.)

§ 20-397. Furnishing false information to the Division; withholding information from the Division.

(a) Every person, firm or corporation operating under the jurisdiction of the Division or who is required by law to file reports with the Division who shall knowingly or willfully file or give false information to the Division in any report, reply, response, or other statement or document furnished to the Division shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court.

(b) Every person, firm, or corporation operating under the jurisdiction of the Division or who is required by law to file reports with the Division who shall willfully withhold clearly specified and reasonably obtainable information from the Division in any report, response, reply or statement filed with the Division in the performance of the duties of the Division or who shall fail or refuse to file any report, response, reply or statement required by the Division in the performance of the duties of the Division shall be guilty of a misdemeanor and shall be fined or imprisoned in the discretion of the court. (1985, c. 454, s. 1.)

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1987

I, Lacy H. Thornburg, Attorney General of North Carolina, do hereby certify that the foregoing 1987 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by The Michie Company under the supervision of the Department of Justice of the State of North Carolina.

LACY H. THORNBURG
Attorney General of North Carolina